



FMB

Financial | Biro
Mediation | Pengantaraan
Bureau | Kewangan

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ANNUAL
REPORT
2014

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Chairman's Message

Tan Sri Dato' Seri Siti Norma binti Yaakob

Overview

When launching the Financial Mediation Bureau (FMB) ten years ago, Y.Bhg. Tan Sri Dr. Zeti Akhtar Aziz, Governor of Bank Negara Malaysia (BNM) highlighted the importance of developing a financial system that best serves our nation and an important component in the financial system has been the consumer protection framework. We are indeed proud of our existence and contribution to the entire financial system as an alternative platform for financial consumers to seek redress over the past years. We are humbled by the undivided support extended to us by many of our stakeholders, especially from BNM and our Members. We treasure the invaluable experience we have gained thus far and we look forward to contributing even more extensively in our role as an independent and impartial alternative dispute resolution channel for the financial consumers and the financial industry.

Resignation of Board Member

Encik Zainudin bin Ishak, who represents the interests of the takaful industry has tendered his resignation as a Board Member in December 2014. On behalf of the Board, I would like to take this opportunity to express our gratitude and appreciation to Encik Zainudin for his invaluable services and contribution to the Board. We wish him all the very best in his new endeavours.

Implementation of the Financial Ombudsman Scheme (FOS)

BNM has issued a Concept Paper on the FOS in August 2014 and the feedback from the relevant stakeholders have been considered and accepted where appropriate. The final framework for the FOS will be announced by BNM in due course. We understand that the FOS is expected to be implemented in the second half of 2015. Under the FOS, the Bureau's jurisdiction will be expanded, consistent with the increase in the monetary threshold to RM250,000.00 for all types of disputes, except for motor property insurance/takaful claims (not exceeding RM10,000.00) and claims for unauthorised transactions involving payment instruments and payment channels (not exceeding RM25,000.00).

The preparatory work for FMB to undertake the expanded role has begun in the last quarter of 2014. The Board saw the need to seek professional expertise to undertake a holistic review of the organisational needs in anticipation of the implementation of the FOS. To be specific, the Board has appointed Messrs Towers Watson, a human resources consultancy firm, to undertake job evaluation and benchmarking exercise against other existing financial ombudsman services, particularly involving key positions such as the Ombudsman and the Case Manager. In addition, the Board has also appointed Messrs Shearn Delamore & Co., Advocates and Solicitors, to review FMB's Memorandum and Articles of Association (M&A). The job evaluation and benchmarking exercises, as well as the review of the M&A, are currently in progress.

FMB's Performance in 2014

In 2014, FMB received a total of 13,190 enquiries and complaints (2013: 15,142), of which, only 1,691 cases fell within its jurisdiction and were registered as formal disputes (2013: 1,881 cases). Telephone calls and e-mails remained the main communication channels between the general public and FMB. Walk-in customers contributed only about 6.6% of the enquiries and complaints received in 2014. As in previous years, the bulk of enquiries and complaints received from the general public was on insurance claims (7,678 cases or 58.2%) and the remaining on banking issues (5,512 cases or 41.8%).

FMB handled a total of 2,721 cases in 2014 (2013: 3,622 cases), of which, 1,030 cases were brought forward from 2013. As at 31 December 2014, a total of 2,106 cases were resolved (2013: 2,592 cases) - 1,362 cases were related to insurance and takaful (64.7%) and the remaining 744 cases (35.3%) related to banking. The Board is delighted to note that the number of cases remained outstanding has reduced to 615 cases (2013: 1,030; 2012: 1,741; 2011: 2,540; and, 2010: 3,150), the lowest in the last four years.

The decreasing number of complaints registered with FMB and the lower number of outstanding cases as at 31 December 2014, is a positive sign of concerted efforts taken by the financial service providers (FSPs) and the Bureau to resolve disputes effectively and collaboratively. This includes better complaints handling by the FSPs and enhanced understanding on the dispute resolution process undertaken by FMB, as well as, the basis of which cases were decided by FMB.

2015 and Beyond

The Malaysian financial landscape is continuously being redefined and so is the consumer protection framework. The primary focus for FMB in 2015 and the years ahead would be to operate the Financial Ombudsman Scheme (as approved by BNM) efficiently and effectively, as well as, to further enhance its collaboration with all the stakeholders.

Appreciation

On behalf of the Board, let me thank our Members for their financial support by way of annual levy and the co-operation extended to FMB during the year. I would also like to thank the industry associations for their valuable contribution through periodic engagement and dialogue with FMB.

Last but not least, let me also record my deepest appreciation to the management and staff of FMB for their continued commitment, dedication and performance in 2014.



Tan Sri Dato' Seri Siti Norma binti Yaakob

Chairman

31 March 2015



From the Desk of the CEO

Lee Eng Huat

Overview

2014 marks the tenth year of the Financial Mediation Bureau's (FMB) existence as a centre for redress mechanism in the financial industry. Over the past years, many financial consumers have used the services provided by FMB to resolve their disputes. FMB's services are free of charge for the financial consumers. This is made possible because of the financial support received from its Members by way of annual levy.

During the last ten years, FMB has put in place necessary changes and processes to ensure efficient service for its Members and the financial consumers. Priority has been accorded by FMB to further enhance its effectiveness and efficiency as a reputable and preferred alternative dispute resolution mechanism within the financial industry. Significant efforts were taken to improve complaints handling processes, the quality of dispute resolution and engagement with its stakeholders. There was also continuous public engagement to impart greater awareness and to disseminate information on FMB's jurisdiction and its benefits.

The Concept Paper on the Financial Ombudsman Scheme (FOS) was issued by BNM in August 2014. Valuable feedback from the general public and the relevant stakeholders in the financial industry on the FOS was received and considered by BNM. As indicated in the Concept Paper, the FOS is expected to be implemented in the second half of 2015. Nonetheless, the final implementation date will be determined by BNM. Moving forward, FMB's jurisdiction will be expanded under the FOS.

Complaints Handling in 2014

Public Enquiries and Complaints

During the year, FMB handled a total of 13,190 enquiries and complaints from the general public, of which 58.2% were related to insurance claims and the remaining 41.8% were banking disputes as compared to 15,142 in 2013. Out of the 13,190 enquiries and complaints received in 2014, only 1,691 new cases (2013: 1,881 cases) were registered by FMB on the basis that such cases fell within FMB's jurisdiction.

The lower number of enquiries and complaints received and the smaller number of new cases registered by FMB in the recent years reflects the improvements in complaints handling by the financial service providers (FSPs) and the greater awareness on the part of the general public with regard to the jurisdiction and the terms of reference of FMB as an alternative channel for redress. The various engagement sessions with the FSPs and their industry associations served as a useful platform to exchange views and information on issues of common interest to the financial industry, based on the types and nature of complaints registered by FMB and to further understand the challenges encountered in complaints handling and dispute resolution process.

Cases Handled and Resolved

During the year, FMB handled a total of 2,721 cases, of which, 1,030 cases were brought forward from 2013 and 1,691 new cases were registered in 2014. As at 31 December 2014, a total of 2,106 cases were resolved. The number of disputes resolved during the year, as a percentage of the total number of cases brought forward from previous years and new cases registered during the year, continues to improve; it has increased steadily from 60.9% in 2012, to 71.6% and 77.4% in 2013 and 2014 respectively.

Manner of Disposal

Out of the 2,106 cases closed in 2014, 745 cases (35.4%) were resolved amicably by way of negotiated settlements (2013: 36.7%), 1,102 cases (52.3%) settled by the Mediator upholding the decision of the FSP (2013: 47.1%) and 71 cases (3.4%) closed by revising the decision of the FSP (2013: 3.8%). The remaining 188 cases (8.9%) were withdrawn by the complainants or found to be outside FMB's jurisdiction (2013: 12.4%) upon investigation.

Outstanding Cases

It is very encouraging to note that over the last few years, the number of cases that remained outstanding at the close of the financial year has reduced. The number of outstanding cases as at 31 December 2014 dropped to 615 cases (2013: 1,030 cases) – the lowest achieved. This declining number was attributed to the continual efforts by FMB to resolve cases as soon as reasonably practicable. In this regard, FMB recognises the importance of the co-operation and support rendered by the disputing parties and undertakes to collaborate effectively with the FSPs and the financial consumers to resolve disputes in an efficient and timely manner.

Stakeholders' Engagement

With the implementation of the FOS in the second half of 2015, FMB foresees the need for greater stakeholders' engagement in 2015 and beyond. FMB, working in partnership with Bank Negara Malaysia (BNM), Perbadanan Insurans Deposit Malaysia Berhad (PIDM), Agensi Kaunseling dan Pengurusan Kredit (AKPK), Federation of Malaysia Consumers' Association (FOMCA), Persatuan Keselamatan Pengguna Kuala Lumpur (PKP) and other non-profit organisations, will continue to embark on awareness programmes with a view to disseminate useful information to the general public on the jurisdiction and the terms of reference of FMB and/or FOS. Future engagement sessions may take on different shapes, forms or channels of communication. It includes publishing articles on FMB and/or FOS in major newspapers/magazines for business and finance; participating in TV/Radio 'talk-show' (either 'live' or 'recorded' interviews), releasing press statements, and initiate tailor-made road shows for specific stakeholders.

Other Operational Matters

Levy and Funding Mechanism

In 2014, the amount of levy collected from Members was RM5.45 million (2013: RM5.17 million). The 2014 funding mechanism for the annual levy remained unchanged, whereby each Member pays a flat levy (same amount regardless of the Member's size and the number of complaints received against the Member). However, this funding mechanism is expected to be revamped once the FOS is implemented.

Total operating expenses incurred in 2014 increased by RM93,989.00 (+1.7%) to RM5.49 million (2013: RM5.39 million) mainly due to an increase in office rental which has been budgeted for.

The main thrust of FMB's budgetary process is to ensure that all current and future operating expenses in the course of the financial year are justified or substantiated and also consistent

with FMB's mandate. As such, FMB's policy has always been to adopt prudence and responsible spending, without compromising on the quality of its services to the financial consumers and the general public. Consequently, FMB's corporate governance requires the annual budget to be tabled and endorsed by the Board's Audit Committee before it is submitted for the Board's approval. This has been complied.

Human Resources and Capacity Building

FMB has a total of 40 staff, of whom, 26 are involved in mediation work: 4 Mediators, 14 Assistant Mediators, and 8 Administrative Assistants. The remaining 14 staff are in the Complaints Management Unit (6), IT Support Services (2), and Human Resource & Corporate Affairs / Administration Unit (6).

Appreciation

I wish to express my heartfelt gratitude to the Chairman and the Board of Directors for their excellent leadership and constructive contribution in steering FMB's agenda forward. Their undivided support, dedication and commitment, as well as guidance during the year have made it possible for FMB to perform its mandate effectively.

Let me also formally record my deepest appreciation to our Members and their industry associations for their solid support and co-operation throughout 2014, without which, we would not have been able to discharge our role efficiently. As in the past, I look forward to greater collaboration with BNM, all Members, industry associations and our other stakeholders in the coming years. We are also working closely with the Securities Industry Dispute Resolution Centre (SIDREC) to streamline issues of common interest in regard to the capital markets services and products (especially products sold by commercial banks) for efficient handling of disputes which overlap with our respective jurisdiction. I believe with such collaboration, we will succeed in pursuing FMB's ultimate objective of being a reputable and preferred alternative dispute resolution centre in the financial industry.

Last but not least, I wish to acknowledge and thank my colleagues in FMB for a job well done. I cherish their contribution and I am confident that they will continue to perform at their best. Each and every one of them remains the most valuable asset of the organisation. I look forward to the joy of working closely with them in leading FMB towards greater heights of achievement and in sustaining the Bureau as the centre of excellence for dispute resolution in the financial industry.



Lee Eng Huat

Chief Executive Officer

Financial Mediation Bureau

31 March 2015

BOARD OF DIRECTORS

Tan Sri Dato' Seri Siti Norma binti Yaakob
Chairman

Tan Sri Dato' Sri Tay Ah Lek
Deputy Chairman

Tan Sri Dato' V.C. George
Non-Executive Independent Director

Prof. Datuk Dr. Marimuthu Nadason
Non-Executive Independent Director

Mr Ong Chong Hye
Non-Executive Independent Director

Encik Mohd Radzuan bin Abdul Halim
Non-Executive Independent Director

Mr Wong Teck Kat
Non-Executive Independent Director

Ms Chuah Mei Lin (Banking)
Non-Executive Non-Independent Director

Mr Chua Seck Guan (General Insurance)
Non-Executive Non-Independent Director

Datin Veronica Selvanayagy (Life Insurance)
Non-Executive Non-Independent Director

Encik Zainudin bin Ishak (Islamic Banks & Takaful Operators)
Non-Executive Non-Independent Director

BACKGROUND AND BUSINESS

The Financial Mediation Bureau (FMB) was incorporated on 30 August 2004 and commenced its operations on 20 January 2005 as an alternative channel to resolve disputes between the financial service providers (FSPs) that are supervised by Bank Negara Malaysia (BNM) and their customers (financial consumers).

FMB is a voluntary scheme funded entirely by the FSPs via contribution of annual levy.

Our Services

- We provide service to financial consumers, free of charge.
- We have a professionally qualified and experienced mediation team committed to handle financial disputes received from the financial consumers.
- We handle disputes arising from the products and services provided by the FSPs which presently comprise commercial banks, Islamic banks, investment banks, development financial institutions, insurance companies, takaful operators and card issuers.
- We deal with disputes, claims and complaints in an independent, impartial and fair manner.
- We are committed to resolving all disputes within 3 to 6 calendar months provided the required documentation for the disputes, claims and complaints that are submitted to us are complete.

Our Shared Values

- Integrity
- Professionalism
- Independence and impartiality
- Courtesy

Our Jurisdiction

- A. (i) We mediate all disputes arising from the following conventional and Islamic banking products and services, where claims do not exceed RM100,000.00:
- Personal and Housing Loans
 - Automated Teller Machines (ATMs) and Cash Deposit Machines (CDMs)
 - Credit, Debit and Charge Cards
 - Hire Purchase
 - Savings and Current Account
 - Fixed Deposit and General Investment Account
 - Remittances
 - Electronic Banking and Internet Banking
- (ii) Fraud disputes involving payment instruments such as credit cards, charge cards, ATM/Debit cards and cheques not exceeding RM25,000.00.
- B. We mediate all disputes arising from the following insurance policies and takaful certificates that include:
- Motor and fire claims not exceeding RM200,000.00
 - Other claims (life, medical, burglary, travel, etc.) not exceeding RM100,000.00
 - Third Party Property Damage (TPPD) claims not exceeding RM5,000.00

Disputes out of our jurisdiction

- General pricing and product policies
- Services of Members
- Complaints against non-Members
- Credit decisions (approvals, rejection and rescheduling of loans, abandoned projects)
- Fraud cases with the exception of payment instruments not exceeding RM25,000.00
- Cases which are time-barred (more than 6 years)
- Cases which have been referred to the courts and/or for arbitration
- Actuarial matters

Our Business - Mediation

Overview

All disputes and claims received by us generally go through the following stages:

I. Caucus/Mediation

The Mediator initiates and facilitates discussions between the FSP and its customer (the complainant) and assists parties to work towards an amicable settlement.

II. Decision Stage

Where parties fail to reach an agreement or settlement, the Mediator will, after a thorough investigation, issue a decision. The Mediator's decision, whether to uphold, reject or revise the decision of the FSP is binding on the FSP, but not on the complainant. As the Mediator's decision is made without prejudice to the complainant's legal right of action, the complainant is free to seek alternative channels or avenues to resolve the dispute.

When making a decision, the Mediator will look at all available evidence, documentary or otherwise, and give due consideration to the terms of the contract, any applicable rule of law, judicial authority and statutory provision, good insurance and banking practices, investment and marketing practices, BNM's Guidelines, etc. The duties and powers of the Mediator are elaborated in FMB's Terms of Reference (refer to Appendix III).

Mediation/Decision Process

- All complaints will be registered upon receipt of complete documentation from the complainant.
- The mediation team will commence investigation by seeking information or clarification from the FSP on the dispute raised by the complainant. The FSP is required to explain the grounds of its decision and also forward all relevant documentary evidence that was relied on in rejecting or repudiating the claim. The complainant is also informed of the commencement of the mediation process.
- Upon receipt of the FSP's response and based on all the available information, an assessment is made. At this juncture, further clarification may be sought from the parties, where necessary.
- Where deemed appropriate by the Mediator, arrangements will then be made to bring parties together for a mediation session. If the Mediator feels that it would be more productive to meet with one party, a caucus session will be held instead. The mediation process may also take place through an exchange of correspondence with both parties.
- At the mediation/caucus session facilitated by the Mediator, all parties will have an opportunity to present their case, ask questions, systematically identify issues in the dispute, and explore options for a negotiated settlement. If the dispute is amicably resolved between the parties, a settlement agreement is drawn up and executed by the parties.
- Where there is an impasse between the parties and no settlement is achieved, the Mediator will issue a written decision (decision stage), either upholding or revising the FSP's decision for that case.

The Mediator’s decision is final and there is no appeal procedure within FMB.

Note:

For certain typical and clear-cut complaints, where liability is certain for one party, there will be no mediation/caucus held and a written decision will be issued by the Mediator and communicated to the relevant parties accordingly.

COMPLAINTS MANAGEMENT UNIT (CMU)

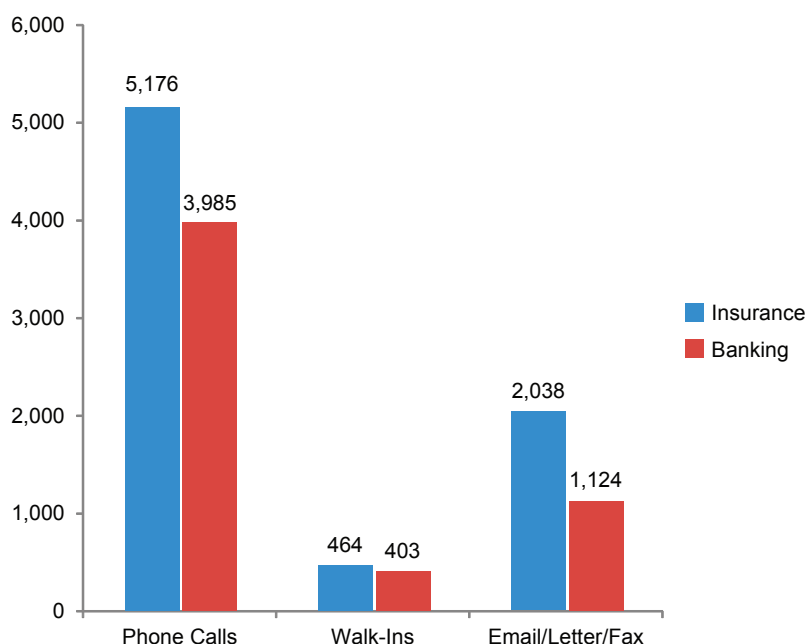
As the ‘frontline’ one-stop centre in FMB, the CMU team handles all enquiries and complaints from the public against the financial service providers (FSPs) who are Members of FMB.

Overall, the number of enquiries and complaints received in 2014 declined from 15,142 recorded in 2013 to 13,190 in 2014, a reduction of 12.9%. Phone calls alone accounted for 69.4% of the enquiries and complaints, with 24% received via letters/e-mails/fax. The remaining 6.6% was received from walk-in complainants.

Enquiries and Complaints Received in 2013 and 2014

Channel	2013			2014		
	Insurance Matters	Banking Matters	Total	Insurance Matters	Banking Matters	Total
Enquiries via Phone Calls	5,833	3,940	9,773	5,176	3,985	9,161
Enquiries/Complaints via Walk-Ins	370	351	721	464	403	867
Enquiries/Complaints via Email/Letter/Fax	3,142	1,506	4,648	2,038	1,124	3,162
Total	9,345	5,797	15,142	7,678	5,512	13,190

Enquiries and Complaints Received in 2014



From the 13,190 enquiries and complaints handled by CMU in 2014, only 1,691 complaints fell within FMB's jurisdiction (12.8%). The remaining 11,571 (87.2%) were enquiries and disputes which fell outside FMB's jurisdiction.

The enquiries frequently received by FMB relate to the following issues:

- a. Documents that have to be submitted to FMB when filing a complaint;
- b. Time frame for filing a complaint; and
- c. Role and jurisdiction of FMB.

From the enquiries received by FMB, we observed that there were quite a number of complainants who were unaware that their disputes should be filed with FMB within six months from the date of the final decision of the FSP concerned.

There were also cases regarding some FSPs' delay in responding or resolving complaints. Such complaints do not fall within FMB's jurisdiction.

FSPs are required to furnish a clear guideline to their customers on the avenue for dispute resolution when a dispute or claim is repudiated by them or when a customer is dissatisfied with the FSP's decision. This is a mandatory requirement under the **Bank Negara Malaysia's (BNM) Guideline on Complaints Handling (BNM/RH/GL/000-4)** for FSPs to include the following statement prominently in all their decision letters issued to customers, where the dispute or claim is within FMB's jurisdiction:

Any person who is not satisfied with the decision of _____ (name of FSP), should refer to the procedure of appeal as stated in the leaflet issued by the Financial Mediation Bureau, entitled 'An Avenue to Seek Redress'.

FSPs are required to remind their customers to refer any monetary claim/dispute to FMB for mediation within six months from the date of the FSP's rejection/decision letter.

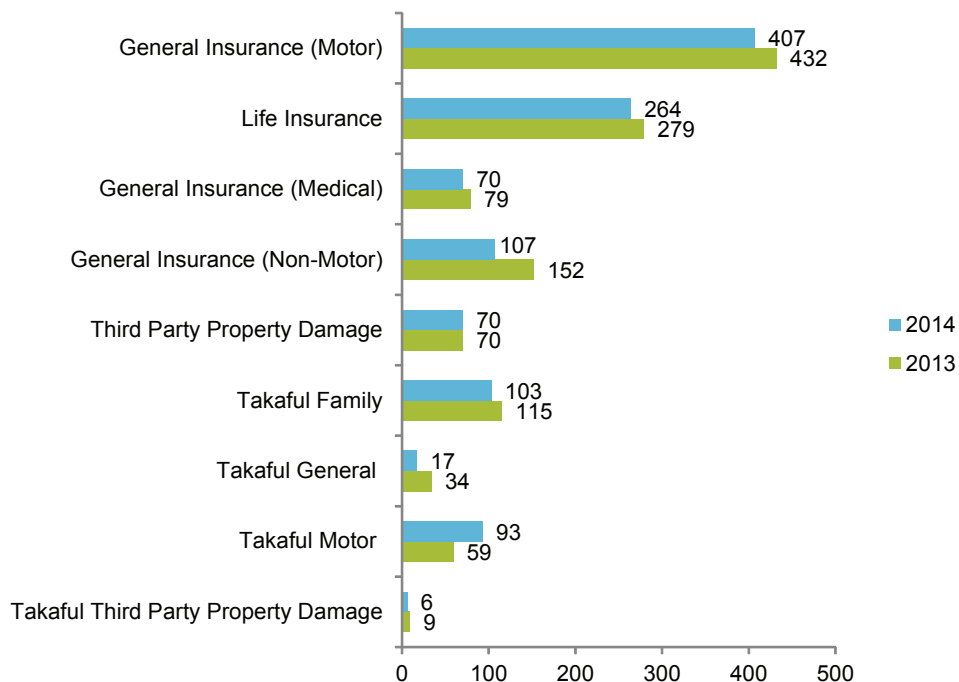
OVERVIEW OF 2014 INSURANCE (INCLUDING TAKAFUL) CASES

Cases Handled

Table A1 – Comparison of Cases Handled in 2013 and 2014

Categories	Cases Handled in 2013			Cases Handled in 2014			
	B/f	Registered	Resolved	B/f	Registered	Resolved	Pending
Conventional							
General Insurance (Motor)	362	432	587	207	407	445	169
Life Insurance	314	279	489	104	264	319	49
General Insurance (Medical)	143	79	203	19	70	81	8
General Insurance (Non-Motor)	195	152	192	155	107	184	78
Third Party Property Damage	66	70	108	28	70	76	22
Takaful							
Family	78	115	135	58	103	135	26
General	10	34	28	16	17	25	8
Motor	55	59	96	18	93	87	24
Third Party Property Damage	10	9	14	5	6	10	1
Total	1,233	1,229	1,852	610	1,137	1,362	385

Chart A1 – Comparison of Insurance and Takaful Disputes in 2013 and 2014 (Cases Received)



There was an overall reduction in the number of complaints registered in the insurance sector over the past 3 years (2012: 1,318 cases; 2013: 1,229; 2014: 1,137). The number of cases received for all types of insurance/takaful risk coverage had reduced, except for Third Party Property Damage (Motor) cases which remained unchanged and Takaful (Motor) cases which had increased by 57.6% last year, from 59 cases in 2013 to 93 in 2014.

The reduction in complaints registered in 2014 was partly due to FMB's continuous collaboration with the Life Insurance Association of Malaysia (LIAM), Persatuan Insurans Am Malaysia (PIAM), Malaysian Takaful Association (MTA) and Bank Negara Malaysia (BNM) to assist the insurers/takaful operators identify recurring systemic issues and the insurers'/takaful operators' proactive development of preventive strategies to address issues raised.

The continuous growth in the customer base of the takaful motor business reflects the corresponding increase in complaints registered under the takaful motor category.

The total number of complaints handled in 2014 (cases brought forward from 2013 plus new cases registered in 2014) was 1,747 compared to 2,462 in 2013, a drop of 29.0%. The majority of the complaints handled in 2014 were the General Insurance (Motor) with a total of 614 cases (35.2%). The Life Insurance and General Insurance (Medical) accounted for 457 cases (26.2%).

▪ **General Insurance (Motor)**

Motor insurance cases which comprised 35.8% of the total number of insurance/takaful complaints registered in 2014 continued to decline with 407 cases registered in 2014 compared to 432 cases in 2013, a marginal reduction of 5.8%. This is partly attributed to the proactive steps taken by the insurers to improve their internal complaints handling processes and resolve disputes amicably. The total number of cases handled in 2014 dropped by 22.7%, from 794 cases in 2013 to 614 cases in 2014. As at end of December 2014, the total number of outstanding cases was 169 compared to 207 as at end of December 2013, a decrease of 18.4%.

Claims involving breach of policy conditions, in particular late notification and non-possession of driving licence remained the main issues addressed in 2014. There was a marked increase in the number of cases involving windscreen claim. It is observed in most cases that the insured did not fully understand the basis of the insurer's assessment on the cost of replacement/repair of the windscreen which is based on the market value. The insured assumed that the insurer will reimburse a claim based on the bill/receipt submitted up to the sum covered. The insured was also unaware that the **Endorsement 89 – Breakage of Glass in Windscreen, Window or Sunroof coverage** includes coverage for all the four glasses in the vehicle, i.e. front and rear windscreen, right and left side window glasses and/or the sunroof and not merely confined to the windscreen. Upon replacement of any glass, the benefit of Endorsement 89 coverage is automatically forfeited unless the coverage is reinstated by a further payment of an additional premium (Refer to Case Studies- Case A02).

As in the previous year, the mediation team held discussions with PIAM to identify emerging and systemic issues and to assist insurers develop preventive strategies. For instance, a proposal was made to refine the wordings of **Endorsement 89 – Breakage of Glass in Windscreen, Window or Sunroof** to include the following:

“The assessment of the claim would be based on the market value of the cost of replacement”.

PIAM has agreed to review the Endorsement 89 wordings pending BNM's approval on the Private Car Plain Language policy and endorsement wordings. We are of the view that the proposed amendments would enable the policyholders to understand Endorsement 89 and reduce similar claims in the future.

We are pleased to observe that most insurers have responded to our queries within the given time frame. However, we are concerned that some insurers do not respond on time or update FMB on the progress of claims despite numerous reminders sent. The co-operation of the insurer(s) concerned is of utmost importance to ensure a speedier resolution of disputes.

▪ Life Insurance and General Insurance (Medical)

In 2014, the Life Insurance and General Insurance (Medical) disputes which comprised 29.4% of the total number of insurance/takaful complaints recorded a decline in the number of new cases from 358 cases registered in 2013 to 334 in 2014, a decrease of 6.7%. The lower number of cases registered is largely attributed to, among others, improvements in the handling of complaints by the insurers. A 53.7% reduction in the number of pending cases, from 123 cases as at end of December 2013 to 57 in 2014 is due to the efforts taken by the mediation team to resolve all outstanding cases in line with FMB's objective and focus in 2014.

The disputes in this category involved medical and hospitalisation, critical illness, total and permanent disability, accidental and death claims. In 2014, 49% of the cases registered were medical and hospitalisation claims with issues mainly concerning charges for co-insurance, deductible and overseas treatment.

The mediation team's engagement with LIAM continues to be an important forum for FMB to share best practices and also assist insurers identify recurring systemic issues with a view to expedite and improve handling of complaints by the insurers. In 2014, a meeting was held to discuss the implementation of Schedule 9¹ of the Financial Services Act 2013.

One of the recurring systemic issues highlighted during our annual meeting with LIAM was the repudiation of medical claims on the grounds of non-submission of original medical bills/receipts. For such claims, insurers are required to request for a statutory declaration from the claimant/insured and to carry out a due diligence search before the claim is referred to the Bureau. However, we note that some insurers still insist on the original medical bills/receipts even though the claimant/insured had misplaced the receipts. On this note, insurers are reminded to comply with the **BNM's Guideline on Claims Settlement Practices (Consolidated) BNM/RH/GL/003-9**, which states:

4.4.2 *Repudiation of Liability*

4.4.2.1.1 *An insurer should not repudiate a claim on the following grounds:-*

- *technical breaches of warranty or policy conditions which are not material or unconnected to the circumstances of the loss...*

▪ General Insurance (Non-Motor)

The number of cases received comprised 9.4% of the total number of complaints received in 2014. There was a 29.6% drop in the number of cases received, from 152 cases registered in 2013 to 107 in 2014.

Correspondingly, the total number of complaints handled in 2014 (cases carried forward from 2013 plus new cases registered in 2014) has also decreased from 347 cases in 2013 to 262 in 2014. It is of significance to note that the number of cases that remained outstanding has also decreased by 49.7% from 155 in 2013 to 78 in 2014.

¹ Schedule 9 which sets out the pre-contractual duty of disclosure and representations for contracts of insurance in Part 2, and the remedies for misrepresentations relating to contracts of insurance in Part 3 of the Schedule came into effect on 1 January 2015.

- **Third Party Property Damage (TPPD)**

In 2014, 70 new cases were registered and 28 cases were brought forward from 2013. The number of cases that remained outstanding as at December 2014 reduced by 21.4% to 22 (2013: 28).

Complaints registered in 2014 largely involved disputes on the rates paid for the loss of use of vehicles whilst other disputes involved breach of the terms and conditions of the motor policy.

- **Takaful (Family, General, Motor and TPPD)**

A slight increase by 0.9% in the number of takaful complaints, which comprised 19.3% of the total number of insurance/takaful complaints registered in 2014 is attributed to the continuing growth of the takaful business in the industry.

The Takaful Family disputes remained the highest number of cases registered in the takaful category followed by Takaful Motor. Takaful Family claims involved mainly breaches of Certificate's terms and conditions, definition of total permanent disability, non-disclosure of pre-existing illness and hospital benefits claims.

The Takaful Motor cases recorded an increase of 57.6% from 59 cases registered in 2013 to 93 in 2014, whereas the Takaful Family and Takaful Third Party Property Damage registered a decline in 2014.

In line with FMB's objective to resolve complaints expeditiously, the mediation team had adopted a pro-active approach by engaging and meeting the takaful operators on a regular basis to identify systemic issues, share information and to expedite possible settlements. In addition, the mediation team had a dialogue session with MTA on the implementation of **Schedule 9² of the Islamic Financial Services Act 2013**.

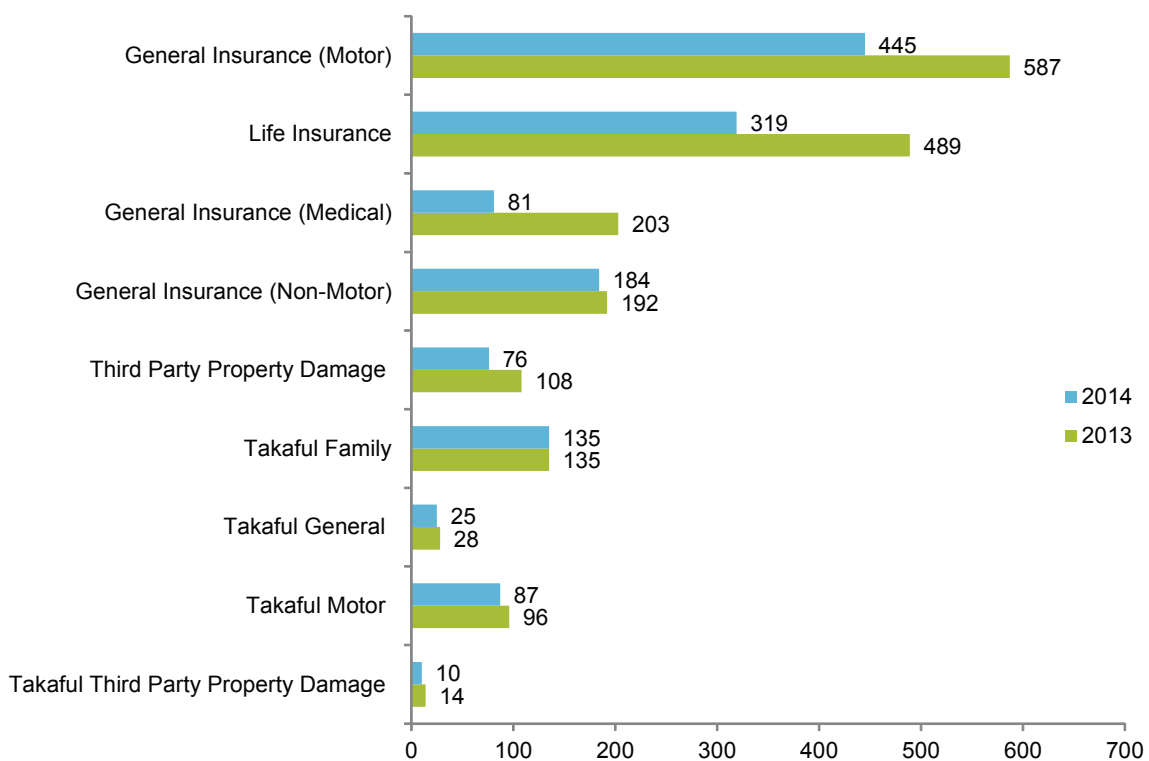
² Schedule 9 which sets out the pre-contractual duty of disclosure and representations for contracts of takaful in Part 2, and the remedies for misrepresentations relating to contracts of takaful in Part 3 of the Schedule came into effect on 1 January 2015.

Cases Resolved

Table A2- Comparison of Cases Handled and Resolved in 2014

Categories	Cases Handled in 2014			Cases Resolved in 2014		
	Cases Brought Forward	Cases Registered in 2014	Total Cases Handled	Cases Brought Forward	Cases Registered in 2014	Total Cases Resolved
Conventional						
General Insurance (Motor)	207	407	614	207	238	445
Life Insurance	104	264	368	104	215	319
General Insurance (Medical)	19	70	89	19	62	81
General Insurance (Non-Motor)	155	107	262	155	29	184
Third Party Property Damage	28	70	98	28	48	76
Takaful						
Family	58	103	161	58	77	135
General	16	17	33	16	9	25
Motor	18	93	111	18	69	87
Third Party Property Damage	5	6	11	5	5	10
Total	610	1,137	1,747	610	752	1,362

Chart A2 – Comparison of Cases Resolved in 2013 and 2014



In 2014, the overall number of insurance/takaful cases resolved had reduced by 26.5% to 1,362 cases compared to 1,852 in 2013. The number of cases handled during the year reduced by 29.1%, from 2,462 in 2013 to 1,747 in 2014. The percentage of cases resolved against the total number of cases handled during the year increased to 78% in 2014 compared to 75.2% in 2013.

The 610 outstanding cases brought forward from 2013 were resolved during the year. In addition, 66.2% of new cases registered in 2014 (75 cases) were resolved within the year compared to 57.5% in 2013. As a result, the outstanding cases as at 31 December 2014 reduced to 385.

▪ **General Insurance (Motor)**

All cases which were brought forward from 2013 were resolved in 2014. For the 407 new cases registered in 2014, 58.5% were resolved during the year. The 24.2% drop in the number of cases resolved in 2014 is mainly due to the lower number of outstanding cases brought forward to 2014 (207) compared to 362 cases brought forward to 2013. However, the percentage of cases resolved against the total number of disputes handled in 2014 (72.4%) had remained fairly consistent with the percentage recorded in 2013 (73.9%).

Close collaboration between FMB and the industry, be it via mediation or caucus sessions continue to be the main reason for quicker resolution of cases in 2014. We commend the insurers for their continued co-operation, positive response to our request for information/evidence and their willingness to resolve disputes during mediation.

▪ **Life Insurance and General Insurance (Medical)**

The reduction in the number of cases resolved for Life Insurance and General Insurance (Medical) in 2014 from 692 cases in 2013 to 400 in 2014 was largely contributed by a lower number of cases brought forward to 2014. The cases resolved in 2014 constituted 69% of new cases registered in 2014 and 31% of cases brought forward to 2014.

The mediation team's continued efforts to resolve disputes quickly has resulted in 83% of cases resolved in 2014 (277 resolved: 334 registered) compared to 70% resolved in 2013 (358 registered: 251 resolved). The number of cases which remained outstanding as at December 2014 has improved to 57 cases compared to 123 in 2013.

The slight increase in the percentage of cases resolved against the total number of disputes handled from 85% in 2013 to 88% in 2014 is encouraging as it marks a positive improvement in our dispute resolution process.

▪ **General Insurance (Non-Motor)**

The number of cases resolved has reduced by 4.2% from 192 cases in 2013 to 184 cases in 2014. The reduction is due mainly to a decrease in the number of cases registered from 152 cases in 2013 to 107 cases in 2014, and a lower number of cases brought forward to 2014 compared to 2013 (2014 : 155; 2013: 195).

Of the cases resolved in 2014, 84.2% comprised cases brought forward from the previous year and 15.8% were cases registered in 2014. By comparison in 2013, 91.7% of cases resolved comprised cases that were brought forward from the previous year while 8.3% were cases registered in 2013.

A significant reduction by 49.7% in the number of outstanding cases as at December 2014 compared to December 2013 (that is, from 155 to 78) is due mainly to concerted efforts by the parties to resolve disputes expeditiously.

▪ Third Party Property Damage (TPPD)

Out of the 98 cases handled in 2014, 76 cases (77.6%) were resolved, which is fairly consistent with the number of cases handled and resolved in 2013, i.e. 79.4%.

The insurers' familiarization with FMB's dispute resolution process has helped to achieve amicable settlement of disputes between parties. Nevertheless, we observe a few similar recurring issues which were raised to PIAM. For instance, issues regarding the differences between the recommendation by the loss adjuster appointed by the third party claimant and the in-house assessor's recommendation on the number of days required to repair the vehicle.

We have highlighted to PIAM **Condition 3 of Appendix II, BNM's Guidelines On Claims Settlement Practices (Consolidated) BNM/RH/GL/003-09**, which states:

3. *The number of days for computation of CART shall be based on the independent loss adjuster's recommendation on the number of days for repair of the damaged vehicle subject to the insurers' discretion to apply an additional seven working days grace period for unforeseen delays.*

The Guideline above clearly states that the recommendation for the number of days for repair shall be made by the independent loss adjuster and not by the insurer's in-house assessor. As such, we urge insurers to comply with the Guideline above so as to avoid unnecessary disputes as well as misconception on the loss adjuster's professionalism and competency.

Another issue discussed with PIAM was the claimant's dispute on the insurer's method of computing the CART. We observed that the method employed by the insurer, which is to divide the total repair time by 8 hours per day, was not in accordance with **PIAM's Circular No. 223 of 2006**, which states:

Compensation for Assessed Repair Time (CART)

Please note that Assessed Repair Time means the number of days required for the repair of the damaged vehicle as assessed and recommended by the independent loss adjuster and shall exclude any delays, howsoever and/or by whomsoever caused, which may occur before and/or after the actual repair.

The claimant contended that the insurer should take into account the number of days required to repair the vehicle and the insurer's method of computation was not expressly allowed by the Circular. We would advise insurers to specify the recommended number of repair days by the loss adjuster in their offer letter as required in the BNM's Guideline and PIAM's Circular.

▪ Takaful (Family, General, Motor and TPPD)

The number of takaful cases resolved decreased slightly from 273 cases in 2013 to 257 cases in 2014. This is due to a 36.6% reduction in the number of cases brought forward to 2014 compared to 2013. The reduction is partly attributed to the takaful operator's continuous initiative to exercise their discretion to resolve complaints and the improvements made to their claims process.

In 2014, 100% of cases brought forward from 2013 and 73% of new cases registered were resolved. The percentage of cases resolved against the total number of takaful disputes handled during the year increased to 81.3% in 2014 compared to 73.8% in 2013.

Manner of Disposal

Table A3 – Analysis of Cases Resolved in 2014

Categories	Resolved by Mediation	Decision by Mediator		Sub-Total Cases Resolved	Others (No Response, Withdrawn)	Total Cases Resolved
		Mediator Upheld FSP's Decision	Mediator Revised FSP's Decision			
Conventional						
General Insurance (Motor)	109	293	5	407	38	445
Life Insurance	55	230	1	286	33	319
General Insurance (Medical)	14	61	1	76	5	81
General Insurance (Non-Motor)	41	109	0	150	34	184
Third Party Property Damage	52	20	1	73	3	76
Takaful						
Family	26	94	1	121	14	135
General	2	17	0	19	6	25
Motor	8	63	0	71	16	87
Third Party Property Damage	6	2	0	8	2	10
Total	313	889	9	1,211	151	1,362

In 2014, out of a total of 1,211 registered complaints (excluding cases withdrawn/no response), 313 cases (25.9%) were resolved amicably via negotiated settlements facilitated by FMB. In view of an impasse for the remaining 898 cases, decisions were issued by FMB which either upheld the insurers'/takaful operators' decision (889 cases: 99%) or revised their decision (9 cases: 1%). A total of 151 cases were closed due to non-response or withdrawn by the complainants.

FMB's decisions (either to uphold or revise the insurers'/takaful operators' decisions) were made after a thorough review and investigation during the mediation process when the parties fail to reach a resolution. It is noted that 99% of the decisions of insurers'/takaful operators were upheld. This indicates that most of the decisions made by the insurers are in line with the policy/certificate terms and conditions as well as BNM's Guidelines. It is observed that the improved quality of the insurers'/takaful operators' decisions was also a contributing factor for upholding their decisions.

As in past years, insurers'/takaful operators have continued to seek FMB's advice especially in the new and unsettled areas where potential issues are anticipated. Through active engagement with the insurers'/takaful operators, a close rapport is established and FMB is able to bring the parties together at the mediation table to discuss the issues and work towards an amicable resolution with minimum intervention by the Mediator.

Mediation continues to be the preferred resolution channel for financial disputes as it builds confidence and promotes goodwill between parties.

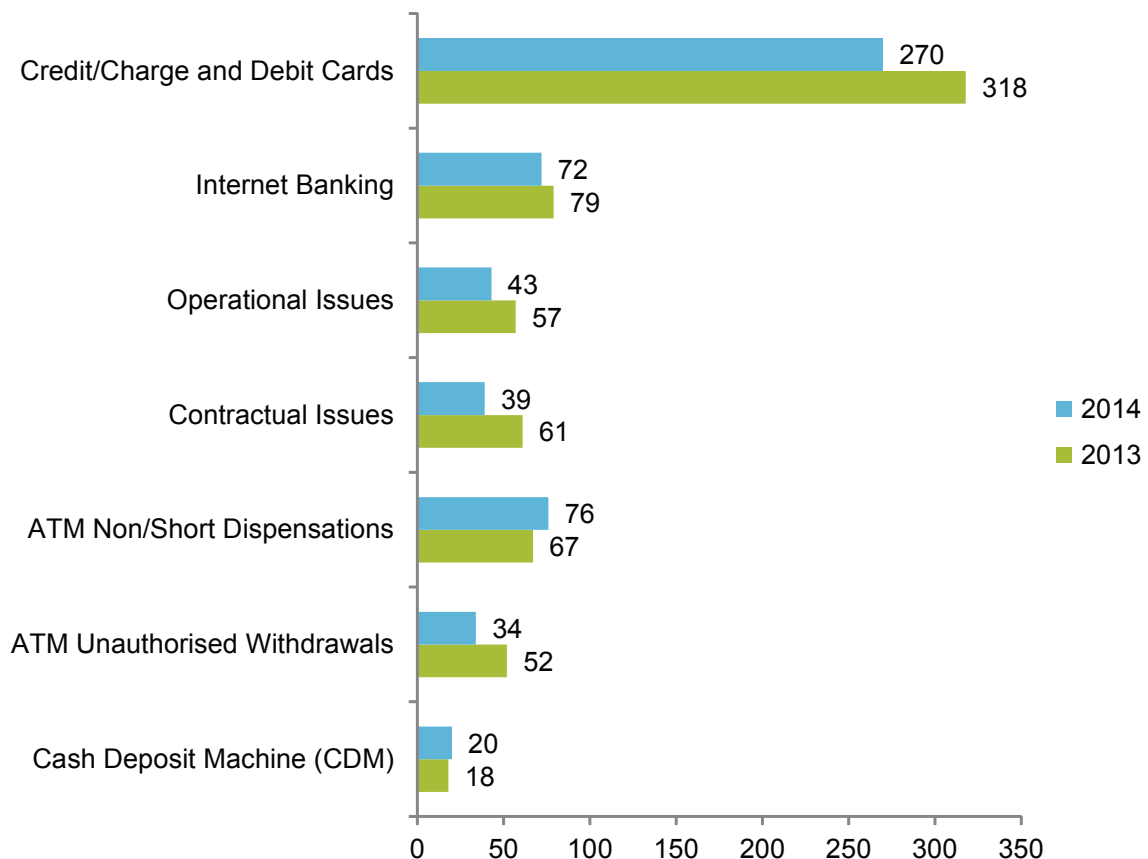
BANKING (INCLUDING ISLAMIC BANKING)

Cases Handled

Table B1 – Comparison of Cases Handled in 2013 and 2014

Categories	Cases Handled in 2013			Cases Handled in 2014			
	B/f	Received	Resolved	B/f	Received	Resolved	Pending
Credit/Charge and Debit Cards	139	318	286	171	270	347	94
Internet Banking	109	79	90	98	72	105	65
Operational Issues	59	57	94	22	43	51	14
Contractual Issues	50	61	89	22	39	47	14
ATM Non/Short Dispensations	62	67	90	39	76	90	25
ATM Unauthorised Withdrawals	62	52	52	62	34	90	6
Cash Deposit Machine (CDM)	27	18	39	6	20	14	12
Total	508	652	740	420	554	744	230

Chart B1 – Comparison of Cases Received in 2013 and 2014



The overall number of complaints received against the banking sector declined by 15.0% from 652 cases in 2013 to 554 in 2014. The total number of banking cases handled by FMB in 2014 (cases brought forward from 2013 and new cases registered) was 974 compared to 1,160 in 2013, a decline by 16.0%. This was due to the lower number of cases brought forward from 2013 and the relatively lesser number of new cases received in 2014. As in previous years, the bulk of the complaints received in 2014 were related to credit/debit card disputes which represents 48.7% of the total complaints received.

In regard to disputes involving unauthorised use of credit/debit cards and internet banking transactions and other payment instruments, banks are advised to adhere closely to the recent **Bank Negara Malaysia's (BNM) Circular on Managing Risks of Electronic Banking, Direct Debit and Risks Associated with Payment Instruments dated 24 December 2014**, which requires banks, amongst others, to continuously assess the effectiveness of their risk mitigation measures and take proactive measures on a timely basis in addressing new security threats that may result in financial losses to the banks and their customers as it would undermine customer confidence and the banks' reputation.

▪ Credit/Charge and Debit Cards

There was a decrease of 15.0% in the number of new cases received in 2014, from 318 cases received in 2013 compared to 270 in 2014. The lower number of new cases was due mainly to the pro-active steps taken by the banks to resolve disputes amicably with the complainants. The bulk of the cases handled in 2014 were related to lost/theft of physical cards, compromised usage of card and Personal Identification Number (PIN) and cash advance/retail transactions. Disputes relating to online transactions continued to decline with the implementation of the One Time Password (OTP) by banks to authenticate the identity of a customer and to authorise on-line transactions.

We observed that customers are generally unaware that their debit cards can be used for ATM cash withdrawals as well as retail transactions (Refer to Case Studies - Case B15). We note with concern that most retail transactions in the country do not require PIN to complete a retail transaction. The lack of identity authentication for retail transactions is risky if unauthorised third parties in possession of the debit card perform retail transactions. Banks should highlight and educate their customers on the dual function of debit cards and the inherent risk associated with its usage. It is recommended that separate forms should be issued for the application of ATM and debit cards respectively. Debit card facilities should only be issued upon specific request by customers and not automatically issued when an account is opened. Alternatively, when banks replace ATM cards with debit cards, they should ensure customers are given the option to choose ('opt-in' approach) whether to use the debit card only for ATM withdrawals and/or to perform retail transactions.

We also observe that customers generally do not read the Short Message Service (sms) sent to their mobile phones to inform them of transactions performed using their credit card. Failure to notify the bank as soon as reasonably practicable could result in further losses for the customer. Cardholders have an inherent duty to safeguard their credit/debit cards.

On the other hand, banks should put in place adequate security mechanisms to 'Know Your Customer' in regard to their transaction history and detect large and/or abnormal transactions which differ from their customer's usual spending pattern and contact the customer expeditiously to verify any unusual transactions.

▪ Internet Banking

The total number of internet banking cases handled in 2014 recorded a slight reduction of 9.6%, from 188 cases in 2013 to 170 in 2014. Similarly, the number of new cases received declined slightly by 8.9% in 2014 (72 cases) compared to 2013 (79 cases). Overall, the number of internet banking cases received and handled in 2013 and 2014 remained fairly consistent due to greater customer awareness and education via materials published by the banks in their websites, newspaper articles and also social media.

Most of the internet banking disputes handled in 2014 involved 'phishing' e-mail scams where fraudsters impersonate a bank and send e-mails to customers requiring them to update their accounts to avoid disruption to their online banking services. Customers are requested to click on a hyperlink provided in the e-mail which directs them to a fake website where their username, password and transaction authorization code (TAC) would be revealed. Upon obtaining the customer's essential credentials, the fraudster would perform unauthorised transactions without the customer's knowledge.

The TAC is a unique, 6-digit code which provides an additional layer of identity authentication before a transaction is performed via the internet. We observe that customers often do not read the contents of the sms containing the TAC carefully before entering the TAC in the fake website. On the other hand, the banks should ensure that the sms is clear, precise and easily understood by the recipient.

We find that new internet banking users and first time users are most vulnerable to internet banking scams. Therefore, banks should ensure that these customers are fully aware of the risk and appreciate the necessary precautions to be taken when signing up for internet banking services.

▪ Operational issues

The total number of complaints received arising from operational issues recorded a 24.6% decline, from 57 cases in 2013 to 43 cases in 2014. The types of disputes handled involved cheques, fixed deposits/savings, remittances, unit trusts and wrongful debits/credits transactions performed over the counter, shares, structured/investment linked/bancassurance products and Islamic accounts. There was a decline in the number of disputes involving fixed deposits/savings accounts and cheques whereas an influx of cases involving structured/investment linked/bancassurance were received during the last quarter of 2014. Disputes involving fixed deposit/savings accounts and cheques continued to be the main issues dealt with last year.

> *Operational Issues - Fixed Deposits (FD) and Saving Accounts*

Cases received are mainly legacy claims on FD receipts in the custody of customers and/or the estate of the deceased account holder for more than 10 years from the date of placement. In most cases, the complainants produce the original FD receipt(s) as evidence that the FD has not been withdrawn. The 'Rules of Deposit' printed on the reverse side of the FD receipt usually states that the endorsed receipt must be presented to the bank for withdrawal. As the receipt constitutes a prima facie evidence of a debt owed to the customer, decisions are usually made in favour of the customer where the bank is unable to provide evidence that the FD was reported lost and a Letter of Indemnity was executed by the customer or audit trail records to show that the FD was withdrawn.

Where a claim is made on a FD pledged under lien to secure a loan and the original receipt is retained by the bank, the claim is usually dismissed when the bank is able to produce records to show that the fixed deposit has been withdrawn and the proceeds credited into the customer's account (Refer to Case Studies - Case B07).

> *Operational Issues – Cheques*

The common issues dealt with are:

- i. cheques sent via mail were intercepted and fraudulent alterations were made to the amount and payee's name;
- ii. post-dated cheques issued to real-estate agents were fraudulently amended to an earlier date and honoured by the bank;
- iii. cheques stolen by the customer's business partner/staff and credited into unauthorised third party accounts.

In some instances, the collecting bank did not tag the disputed cheque for apparent alteration and the paying bank asserted that there was no necessity to contact the drawer to confirm the cheque prior to payment. When a cheque is tagged for apparent alteration, the onus is on the paying bank to contact its customer to confirm the issuance of the cheque and ensure that the payment is made in accordance with the customer's mandate (Refer to Case Studies – Case B11).

On this note, we bring to attention **Clause 16.4.2 of the eSPICK Guideline** which states:

16.4.2. Apparent alteration(s) shall be tagged with Flag value seven (7). Paying banks receiving such cheques shall treat the tags as notification only and not construed them as instruction to return the cheques unless it is confirmed that the reason provided is manipulation, suspected items or forgery. The Paying bank has to call the customers for confirmation.

Rule 1.2 of the Guideline issued by the Association of Banks in Malaysia on 'Cheque Truncation and Conversion System' also provides:

Rule 1.2: In amplification of the foregoing, tagging cheques with 'Tag Value 7' shall not in any way be construed as an outright return of the cheques on the part of the Collecting Banks. Paying Banks are alerted to handle the cheques so tagged appropriately in accordance with their relevant internal control measures. Representations to customers leading to connotations that it is the Collecting Banks which decide whether or not to 'return' the cheques and to tag the same with 'Tag Value 7' are to be avoided.

- (1) *The Collecting Bank shall tag all non-conforming cheques with the applicable non-conforming flags. The Paying Bank shall be 100% liable for payment on non-conforming cheques, which have been tagged.*
- (2) *The Collecting Bank shall be 100% liable for payment on non-conforming cheques, which have not been tagged with the applicable non-conforming flags.*
- (3) *In the event the Paying Bank decides to pay such a cheque, the Paying Bank shall be 100% liable.*

Decisions are usually made in favour of the customer when the paying bank fails to make a verification call to obtain the customer's confirmation that the cheque is in order for payment. It is trite law that any fraudulent alteration on a cheque is construed as a material alteration which renders the cheque void unless confirmed otherwise by the drawer.

> *Operational Issues - Structured/Investment Linked/Bancassurance Products*

The disputes received in this category involved allegations of mis-selling/misleading advice which led customers to sign up for insurance related product while misled into believing that they were investing in a fixed deposit/savings product. We observed that there were cases where the sales

staff failed to comply with the proper sales procedures and guidelines prescribed to ensure that customers/potential investors fully understand the product features and risks.

BNM's Guideline on Product Transparency and Disclosure (BNM/RH/GL 000-3) emphasizes the need to increase product transparency and disclosure to minimise mis-selling of financial products and services and to ensure that the products sold are suitable to the needs and resources of the customers.

We observed that pertinent documents such as the product disclosure sheet, terms and conditions and the sales illustration are often not executed by the customers/potential investors. On this note, we opine that the banks should maintain a checklist to ensure that all the relevant documents are duly executed and the customers/potential investors initial against the relevant clauses/warning in the documents. Customers should also confirm receipt of the relevant documents in the checklist to prevent claims of non-receipt of documents in the event of a dispute against the bank. An independent staff should conduct a post/after-sale call back review to assess if customers fully comprehend and appreciate the product risks. The cooling-off period should be highlighted in the product disclosure sheet and customers ought to be informed of their option to opt-out of the investment (within a stipulated time frame).

▪ **Contractual issues**

The total number of complaints received arising from contractual issues recorded a decline of 36.1% from 61 cases in 2013 to 39 in 2014. The complaints received were mainly on banking facilities such as loans and Islamic financing. The common issues dealt with are in regard to:

- penalty imposed by the developer where there is a delay in loan disbursement by the bank.
- penalty imposed by the bank on early redemption of the loan (exit penalty).

On cases involving penalty imposed by the developer for late disbursement, we observed that the delay could have been caused by the bank and/or its panel lawyer, the complainant and/or his Sale & Purchase (S&P) lawyer or even the developer himself. This creates a ripple effect which inevitably affects the disbursement process by the bank. In such instances, when the bank and/or its panel lawyer are found to have contributed to the delay, the bank is required to refund its portion of the penalty fee, and the complainant is required to deal directly with the developer and/or his S&P lawyer for the balance of the claim.

For cases involving exit penalty imposed for early loan redemption, most of the complainants are not sure when the lock-in period commences, that is whether it should commence from the date the loan was released in full or from the first disbursement of the loan. The lock-in period is a period during which a loan cannot be redeemed earlier than scheduled without incurring penalty charges as the bank is only able to recover its financing and administrative costs within the prescribed lock-in period for the loan. Generally, the lock-in period is expressly stated in the loan agreement.

In regard to early exit penalty charges, disputes are often amicably resolved through mediation where the banks reviewed the circumstances of the case and **Clauses 8.2 and 8.3 of BNM's Guideline on Responsible Financing (BNM/RH/GL 000-5)**

8.2 Early termination fee imposed on the customer for repaying/paying the financing in part or in full during the lock-in period shall reflect a reasonable estimate of the costs to be incurred by the FSP as a direct result of early termination. Such costs may include:

- *costs that have been recovered because a financing contract with discounted rate during the lock-in period is terminated early; and*
- *initial costs that have not been recovered (e.g. for zero moving cost products)*

8.3 *The early termination fee should not penalise or act as a barrier to prevent the customer from switching or closing a financing account. In this regard, the fee shall exclude any consideration of the following costs:*

- *loss of profit that would have been received if the financing continues until the end of the lock-in period or the end of the financing tenure; and*
- *marketing and other costs associated with obtaining new customers.*

▪ **Automated Teller Machines (ATMs) and Cash Deposit Machines (CDMs)**

The number of complaints registered for ATM non/short dispensation has increased marginally by 13.4%, from 67 cases in 2013 to 76 cases in 2014. Cases relating to cash deposit machine also registered a marginal increase by 11.1%, from 18 cases in 2013 to 20 cases in 2014. Conversely, the number of complaints received for unauthorised ATM withdrawal cases declined by 34.6%, from 52 cases in 2013 to 34 cases in 2014.

> *Non/short dispensation of cash*

A common investigation issue that arises for non/short dispensation of cash complaints is the unavailability of the closed circuit camera (CCTV) recording of the disputed transaction. This is due to the failure of the banks to install CCTVs at the ATM area, malfunction of the CCTV and failure to preserve the CCTV recording upon receipt of a dispute. **BNM's Guideline on the Provisions of Electronic Banking (e-banking) Services by Financial Institutions (BNM/RH/GL 008-10)** requires banks to install CCTV at strategic locations to capture clear images of the cardholder performing the transactions.³ Due to unavailability of the CCTV recording, FMB is unable to ascertain the incidents which transpired during the disputed transaction, conduct of the customer during the withdrawal and identity of the person who took the dispensed cash from the ATM. It is recommended that the retrieval of cash from the ATM by the outsourced security firm and the bank's staff ought to be recorded by a stand camera as this would ensure that the cash retrieved is properly accounted.

Our investigation revealed that in most of the non-dispensation of cash cases, customers failed to wait for the cash to be dispensed by the ATM. The CCTV recordings furnished by banks showed that the customers left the ATM immediately after retrieving the card and without waiting for the cash. The dispensed cash was invariably taken by a third party.

> *Cash deposit machines*

The issues involving cash deposit machine (CDM) related cases were mainly on discrepancies in the amount deposited into the CDM and the amount credited into the account.

In cases where the customers have produced receipts purportedly generated by the CDM for cash deposits made but there are no records of the transactions in the Electronic Journal (EJ), banks are advised to seek the assistance of the respective service providers to verify the receipt produced apart from relying on the EJ records (Refer to Case Studies – Case B01).

> *Unauthorised ATM withdrawals*

Disputes on unauthorised ATM withdrawals usually involve lost/stolen cards, card/PIN compromise, phone call/scams, tap on the shoulder and cloned cards. Some of the recurring issues encountered

³ **Bank Negara Malaysia's Guideline on the Provision of Electronic Banking (e-banking) Services by Financial Institutions Section 25.1.7:** *Financial Institutions should install closed circuit cameras or transaction triggered camera at strategic locations with adequate lighting in order to capture clear images of cardholder performing a transaction*

are instances when the bank blocks the wrong ATM card (where customers have more than one ATM card with the bank) and unavailability of the CCTV recording. The CCTV footage plays an important role to resolve complaints on alleged unauthorised withdrawals as the customers are usually able to recognise the withdrawer at the ATM after viewing the CCTV recording. Availability of the CCTV also assists the complainant to pursue with the police where the complainant does not recognise the withdrawer at the ATM.

In cases where it is established that the card/pin has been compromised, we observed that the customers have used common numbers such as date of birth as the PIN. Customers are advised not to use their date of birth or the National Registration Identity Card (NRIC) numbers as their PIN combination as such numbers can be easily guessed by the third party. On the other hand, banks are urged to continuously educate their customers (through the bank's internet banking services, statements, notices, etc.) to avoid using common and easily guessable passwords as their PIN. In one instance, a customer had written the PIN on the reverse side of the ATM card thereby exposing the PIN to anyone in possession of the card.

Given time is of the essence, customers are urged to contact the bank immediately as any money transferred to a third party account can be immediately withdrawn via ATMs by the fraudsters.

Cloned card disputes are usually resolved amicably when the customer adduced evidence to show that he was not at the location/country where the unauthorised withdrawal had taken place.

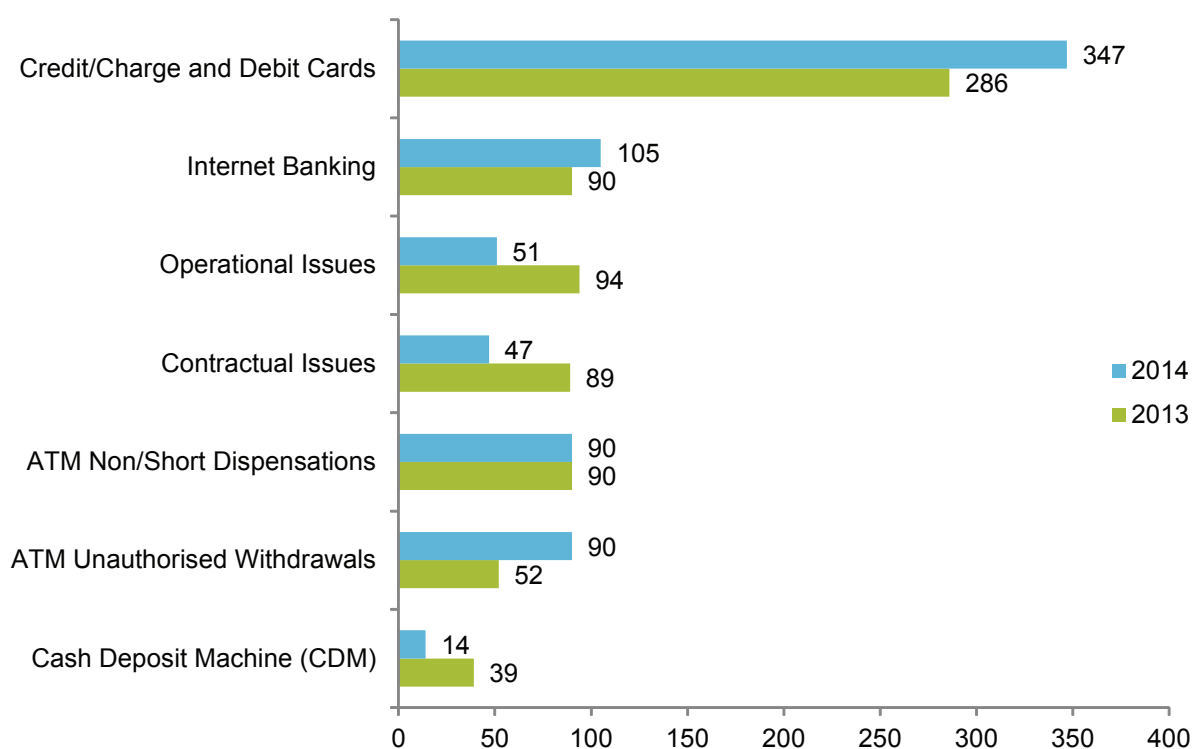
An area of concern is the recurrence of phone call scams where the victim is informed that his credit card has been swiped and he has outstanding debts with a bank (Refer to Case Studies – Case B06). Customers are cautioned to be wary of such calls and to immediately contact their bank to confirm the information before performing any ATM transactions. On the other hand, banks ought to make concerted effort to prevent the loss of money from their customers' account after it is reported. Banks should also ensure that proper procedures are put in place to quickly trace the third party's account into which the money has been transferred and immediately alert the relevant bank of such occurrence and to prevent the money from being withdrawn pending police investigation.

Cases Resolved

Table B2 – Comparison of Cases Handled and Resolved in 2014

Categories	Cases Handled in 2014			Cases Resolved in 2014		
	Cases Brought Forward	Cases Registered in 2014	Total Cases Handled	Cases Brought Forward	Cases Registered in 2014	Total Cases Resolved
Credit/Charge and Debit Cards	171	270	441	171	176	347
Internet Banking	98	72	170	98	7	105
Operational Issues	22	43	65	22	29	51
Contractual Issues	22	39	61	22	25	47
ATM Non/Short Dispensations	39	76	115	39	51	90
ATM Unauthorised Withdrawals	62	34	96	62	28	90
Cash Deposit Machine (CDM)	6	20	26	6	8	14
Total	420	554	974	420	324	744

Chart B2 – Comparison of Cases Resolved in 2013 and 2014



Overall, there was a marginal increase in the number of cases resolved in 2014; 744 cases compared to 740 in 2013 and the 420 cases brought forward from 2013 were resolved. As for the new cases registered in 2014, 58.5% were resolved in 2014, an improvement compared to 50.6% in 2013. This is attributed to the concerted effort taken by the respective mediation teams to resolve the outstanding cases and the timely resolution of the newly registered cases.

- **Credit/Charge and Debit Cards**

The number of cases resolved in 2014 increased by 21.3% as compared to 2013, from 286 cases in 2013 to 347 cases in 2014. The main reason for the resolution of more cases is due to the collaborative effort of both the banks and the customers to resolve their disputes amicably. Furthermore, the banks' offer to absorb a portion of the loss and the customers' willingness to accept the offer has assisted in the higher number of cases being resolved expeditiously in 2014 as compared to 2013.

- **Internet Banking**

The number of cases resolved increased by 16.7% from 90 cases in 2013 to 105 cases in 2014. The cases received were nevertheless resolved amicably on a case to case basis by way of mediation.

- **Operational and Contractual Issues**

The number of cases resolved under operational issues declined by 45.7%, from 94 in 2013 to 51 in 2014. The reduction is due to the lower number of cases brought forward from 2013 which was only 22 compared to 59 cases brought forward from 2012, as well as the lower number of new cases registered in 2014. 29 out of the 43 new cases registered in 2014 were resolved (67.4%) and only 14 cases were outstanding as at 31 December 2014 (2013: 22 cases).

Similarly, the number of cases resolved under contractual issues declined by 47.1%, from 89 in 2013 to 47 in 2014. The reduction is also due to the lower number of cases brought forward from 2013, which is 22 and the lower number of new cases received in 2014 under this category. Out of the 39 new cases registered in 2014, 25 were resolved in the year (64.1%). There were only 14 cases outstanding as at 31 December 2014 (2013: 22 cases).

- **Automated Teller Machines (ATMs) and Cash Deposit Machines (CDMs)**

Under the category of unauthorised ATM withdrawals, there has been a marked increase in the number of cases resolved (73.1%), from 52 in 2013 to 90 in 2014. The improvement is due to the closure of the 62 cases brought forward from 2013 and also 28 out of the 32 (87.5%) new cases registered in 2014. Only 6 cases registered in 2014 were pending as at 31 December 2014.

The number of cases resolved for non/short-dispensation of cash disputes remained the same as in 2013. However, the number of cases remaining as at 31 December 2014 was 26, which was lower than the remaining number of cases in December 2013 (2013: 39 cases). Conversely, there is a reduction in the number of cases resolved under CDM. This is due to the lower number of cases brought forward and the influx of new cases received in the 4th quarter of 2014.

Manner of Disposal

Table B3 – Analysis of Cases Resolved in 2014

Categories	Resolved by Mediation	Decision by Mediator		Sub-Total Cases Resolved	Others (No Response, Withdrawn)	Total Cases Resolved
		Mediator Upheld FSP's Decision	Mediator Revised FSP's Decision			
Credit/Charge and Debit Cards	207	101	29	337	10	347
Internet Banking	98	0	0	98	7	105
Operational Issues	22	19	9	50	1	51
Contractual Issues	27	6	12	45	2	47
ATM Non/Short Dispensations	55	19	4	78	12	90
ATM Unauthorised Withdrawals	21	57	7	85	5	90
Cash Deposit Machine (CDM)	2	11	1	14	0	14
Total	432	213	62	707	37	744

A total of 707 complaints were resolved in 2014 (excluding cases withdrawn/no response). Out of the 707 cases, 432 (61.1%) were settled amicably between banks and their customers through negotiated settlements facilitated by FMB.

As for the remaining 275 cases which could not be resolved via mediation, decisions were issued by FMB which either upheld the banks' decision (213 cases: 77.4%) or revised their decision (62 cases: 22.6%).

For credit card cases, it was noted that 61.42% of the cases were resolved via mediation compared to 72.6% cases in 2013. The slight reduction was due to cases decided in favour of banks as a result of their improved security and safety alert mechanisms implemented. As for internet banking, 100% of the cases were resolved by way of mediation in 2014, compared to 92% in 2013.

It is noted that 70.5% of non/short dispensation cases were resolved via mediation and this is attributed to the willingness of the banks to resolve cases through mediation.

As regards the unauthorised ATM withdrawal disputes resolved in 2014, decisions were required to be issued as the bulk of the cases are mainly related to lost/stolen cards and card/PIN compromised situations where the PIN is often related to the complainant's date of birth which can be easily guessed by anyone in possession of the card. In such instances, resolutions are not easily reached through mediation. 57 out of the 64 decisions issued (89.1%) are in favour of the bank due to the complainant's delay in reporting the lost/stolen card to the bank and card/PIN compromised.



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Case Studies 2014

INSURANCE
(including Takaful)

BANKING
(including Islamic Banking)

INSURANCE (including Takaful)

Motor

Case A01: Failure to Take Reasonable Precaution

Background

The insured driver dozed off while driving and collided into a divider on his right. The vehicle sustained extensive damages due to the impact and the insured had submitted an 'Own Damage' claim to the insurer for the cost of repair.

The insurer, having reviewed all the documentary evidence together with the investigation report, repudiated the claim on the grounds of failure to take 'reasonable precaution' to safeguard the vehicle from loss or damage, in breach of policy Condition 7(c)⁴.

Investigation and Findings

The insurer's in-house investigation report revealed that the driver did not doze off while driving but his mere 'blink of the eyes' had caused the accident. The investigator was not able to establish the fact that the driver had indeed dozed off while driving as stated in his police report. Throughout the investigation, the investigator had repeatedly questioned the driver on his understanding of the word '*terlelap*' in his police report. However, the investigator was unable to ascertain whether the driver had dozed off while driving.

During a caucus session, the driver insisted that he did not doze off as stated in his police report which was not typed by him but by the police officer. The driver emphasized that he had explained the actual circumstances of the accident to the insurer's investigator and he denied that he had dozed off while driving.

The Mediator noted that the insurer's reason(s) for repudiating the claim was not supported by sufficient evidence to show that the driver had dozed off while driving.

Based on the facts of the case, the Mediator was of the view that it was reasonable for liability to be apportioned between the insured and the insurer.

Settlement

The insurer agreed with the Mediator's recommendation and the dispute was amicably resolved.

⁴ **Policy Condition no 7:**

OTHER MATTERS:

This Policy will only be operative if:

(c) You have taken all reasonable precautions to safeguard Your Vehicle from loss or damage.

Case A02: Dispute on Windscreen Coverage

Background

The insured vehicle's left door glass was damaged and she submitted a windscreen claim to the insurer for the replacement of the door glass. The insurer had declined the claim on the grounds that her windscreen coverage had been exhausted in her previous claim and the same windscreen coverage was not reinstated by the insured after the claim was paid.

Investigation and Findings

The insured contended that she had insured her car windscreen at the prevailing market value and the entire insured sum had not been fully utilized in her previous claim. Therefore, the insurer should indemnify her for the remaining sum insured after deducting the previous claim paid to the insured. According to the insured, the insurer is liable to indemnify her for the second claim as the insured sum was not fully exhausted and the policy was still valid when the damage occurred.

The insurer rejected the claim pursuant to **Endorsement 89⁵** in the policy which states that the benefit provided under this endorsement shall be terminated automatically upon replacement of any glass in the windscreen, window or sunroof unless the coverage is reinstated by payment of a further additional premium.

Based on the documentary evidence submitted by the parties, the Mediator noted that the insured had not reinstated the windscreen coverage by paying an additional premium after the first claim. Thus, the benefit of the windscreen coverage had been terminated automatically pursuant to Endorsement 89.

Decision

The Mediator upheld the insurer's decision.

5 Endorsement 89 – Breakage of Glass in Windscreen, Window or Sunroof

In consideration of the payment of additional premium by You to Us, We will pay the cost of replacing or repairing any glass in the windscreen, window or sunroof including lamination/tinting film, if any, of Your Vehicle following breakage of such glass up to an amount not exceeding the sum shown in the schedule.

Provided no claim is made for any further damage to Your Vehicle, any claim under this endorsement shall not affect Your No Claim Discount and You shall not be liable for any excess as stated in the policy.

This benefit shall automatically be terminated upon replacement of any glass in the windscreen, window or sunroof unless the cover is reinstated by payment of a further additional premium.

You may however, subject always to Our agreement whether obtained before or after repair, exercise an option to repair the damaged windscreen, window or sunroof of Your Vehicle. In the event You opt to repair, We will continue to provide this benefit to You during the currency of this period for the amount as stated above:-

(a) Less any claim paid by Us for the repair; or

(b) For the reinstated original amount provided You have paid to Us a further additional premium for reinstatement.

However, in the event of a dispute on the option to repair or replace, Our decision shall be final.

Subject otherwise to the Terms and Conditions of this Policy.

Case A03: Dispute on Market Value

Background

The insured was dissatisfied with the insurer's offer of RM55,000.00 as the market value of his vehicle at the time of loss. According to the insured, the purchase price for the vehicle was RM72,000.00 and the insurance policy was obtained from the insurer's appointed agent for RM80,000.00. The agent had verified the value of the vehicle with insurer's ISM (Insurance Services Malaysia) database at the point of sale before the policy was issued.

Investigation and Findings

The insured furnished a written clarification from the agent which confirmed that she had verified the sum insured of RM80,000.00 with the ISM database prior to the issuance of the cover note. Nevertheless, based on the insurer's clarification with the agent concerned, it was noted that the agent had admitted that she was unable to source the actual market value for the make and model of the insured's vehicle (BMW, 2003 model) in the ISM database. As such, the agent had quoted the market value of a similar model with a different year make (2004 model) to accommodate the purchase price of the vehicle.

The Mediator observed from the adjuster's report that the market value of the insured's vehicle was available in the ISM database and the vehicle was estimated at RM62,200.00 at the time of loss. The Mediator highlighted to the insurer of the agent's omission and/or negligence in referring to the correct market value pursuant to **Section 151 of the Insurance Act 1996⁶** and the **Bank Negara Malaysia's Guideline on Market Value of Motor Vehicles** which states as follows:-

BNM/RH/CIR 010-9	Consumer and Market Conduct Department	Market Value of Motor Vehicles	Page 2/2
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5. MARKET VALUE OF MOTOR VEHICLES

- 5.1 *Insurers/ takaful operators and their agents are required to advise consumers during the pre-contractual stage or renewal of motor insurance/takaful cover of the following:-*
- *the present market value of the motor vehicle;*
 - *the importance of insuring the vehicle at the appropriate market value; and*
 - *the effect of over-insurance and under-insurance when a claim is made.*
- 5.2 *Advice to consumers on the present market value must be based on the ISM Automobile Business Intelligence System (ISM-ABI system) or any other credible vehicle valuation database. The present market value should be indicated in the renewal notice or product disclosure sheet.*
- 5.3 *To ensure consistency in the market value of an insured vehicle at the point of insurance and subsequent claim, the insurer/takaful operator should use the same reference database to determine the market value of the vehicle in both instances.*

Following the above, the Mediator proposed for an amicable settlement between parties by adopting the average market value of the purchase price (RM72,000.00) and the market value quoted in the adjuster's ISM database (RM62,200.00).

⁶ **Insurance Act 1996 - Section 151: Knowledge of, and statement by, insurance agent.**

(2) *A statement made, or an act done, by the insurance agent shall be deemed, for the purpose of the formation of the contract of insurance, to be a statement made, or act done, by the licensed insurer notwithstanding the insurance agent's contravention of subsection 150(4) or any other provision of this Act.*

Settlement

The insurer agreed with the Mediator's recommendation and the dispute was amicably resolved between the parties.

Case A04 : Insured Did Not Possess a Valid Driving Licence

Background

The insured's motorcycle was stolen and a theft claim was submitted to the insurer. The insurer rejected the claim on the grounds that the insured rider did not possess the relevant class of motorcycle licence at the material time of the loss. Thus, the claim was excluded under **General Exception 1** of the policy⁷.

Investigation and Findings

The Mediator observed from the insured's policy document that the insured's motorcycle was a Kawasaki model with the engine capacity of 650 cc.

The Mediator noted that the **General Exception 1** of the policy is in accordance with **section 26 of the Road Transport Act 1987** which requires a person to hold the relevant class of driving licence before using the vehicle on the road. In accordance to the **Road Transport Rules – Motor Vehicles (Driving Licence) Rules 1992**, the rider of a motorcycle with an engine capacity exceeding 500 cc is required to hold a Class B licence.

The Mediator noted from the licensed loss adjuster's report and the Road Transport Department's search submitted by the insurer that the insured rider had only possessed a valid driving licence for Class D (motor car) and B2 (motorcycle not exceeding 250 cc), at the material time of the loss.

Decision

The Mediator upheld the insurer's decision.

⁷ **General Exception 1** : We will not pay for any liability under the following circumstances:-

(1) If You or any person with your consent are not licensed to drive the vehicle except if You or any person with your consent has held and is not disqualified from holding or obtaining such licence to drive your vehicle under any required laws, by laws and regulations.

Case A05: Delay in Notification of Claim

Background

The insured's motorcycle was stolen and the insured submitted a theft claim to the insurer. The insurer rejected the claim on the grounds that the theft was notified to them more than 1 year after the date of the loss. Thus, the insured had breached policy condition 2(a)⁸.

The insured contended that he had notified the insurer's agent of the loss of the motorcycle and submitted the relevant documents immediately after the theft.

Investigation and Findings

The Mediator observed that the agent had admitted in a written clarification that the insured had notified him of the loss 5 days after the theft of the motorcycle and submitted the police report. The agent's staff had immediately informed the finance company, but neglected to notify the insurer.

Notwithstanding the agent's admission on the negligence of their staff, the insurer had maintained their decision. The insurer contended that their agent was also the authorised agent for the finance company and he had received the notification as the agent of the finance company and not as an agent of the insurer.

The Mediator highlighted to the insurer that it is irrelevant that the agent was also the finance company's agent. The pertinent fact was that the insurer's authorized agent had duly received the notification of the loss from the insured within the time frame stipulated in the policy.

The Mediator drew the insurer's attention to **Section 151 of the Insurance Act 1996**⁹ which imputes knowledge of the agent to the insurer. The Mediator stressed that the insured should not be penalized for the negligence and/or omission of the agent or its staff.

Settlement

The insurer agreed with the Mediator's observation and settled the claim with the insured.

8 Policy Condition 2(a): ACCIDENTS AND CLAIMS PROCEDURE

- (a) *We must be notified in writing or by phone in either case with particulars of the vehicle involved, date of accident and, if possible, a brief description of the circumstances of the accident within the specific time frame as follows after an event which may become the subject of a claim under this Policy:*
- (i) *Within seven (7) days if You are not physically disabled or hospitalised following the event;*
 - (ii) *Within thirty (30) days or as soon as practicable if You are physically disabled or hospitalised as a result of the event;*
 - (iii) *Other than (i) and (ii), a longer notification period may be allowed subject to specific proof by You.*

9 Insurance Act 1996 - Section 151: Knowledge of, and statement by, insurance agent.

- (2) *A statement made, or an act done, by the insurance agent shall be deemed, for the purpose of the formation of the contract of insurance, to be a statement made, or act done, by the licensed insurer notwithstanding the insurance agent's contravention of subsection 150(4) or any other provision of this Act.*

Case A06: Vehicle is Driven in an Unroadworthy Condition

Background

The insured vehicle was involved in an accident and had sustained damage due to the impact. The insured had submitted an 'Own Damage' claim to the insurer for the cost of repair. The insurer approved the cost of repair for all the damaged parts except the damage to the engine as the insured had continued driving the vehicle after the accident and this had caused the engine to seize up due to lack of engine oil.

The insurer referred to **General Exception 7** in the policy which states:

7. *If in the event of any accident or breakdown, Your Vehicle is left unattended..... and if Your Vehicle is driven in an unroadworthy condition before the necessary repairs are effected, any extension of the damage or any further damage to Your Vehicle shall be excluded from the cover granted to this Policy.*

Investigation and Findings

The insurer's decision was based on the loss adjuster's findings, which revealed that the insured had collided against the road divider which damaged the engine oil sump and subsequently caused an oil leak. The damage to the engine was due to the lack of engine oil caused by the oil leak when the insured continued to drive the vehicle after the accident from the point of impact to the road side.

The Mediator observed from the loss adjuster's investigation report that the accident had occurred at 6.30am and it was dark at the material time. As such, it is unlikely that the insured would have noticed the damage at the material time, even if the insured had alighted from the vehicle and checked the damage. Further, the distance between the point of impact and the roadside was only 15 meters. The insured had informed the loss adjuster that he had driven the vehicle to the roadside so as to not to obstruct the traffic.

The Mediator was of the view that in the circumstances of the case, the insured's appeal merits the insurer's consideration.

Settlement

The insurer agreed with the Mediator's observation and settled the claim amicably with the insured.

Life/Medical

Case A07 : Hospitalisation Claim – Post Hospitalisation Treatment

Background

The assured met with an accident on 8/5/2013 and submitted an 'Emergency Accidental Outpatient Treatment' claim for the follow-up treatment sought on 12/6/2013.

The insurer repudiated the assured's follow up treatment claim on the ground that the treatment was sought more than 30 days after the accident. The insurer referred to the policy provision which states:

4.4.16 *Emergency Accidental Outpatient Treatment*

*Reimbursement of the Reasonable and Customary Charges incurred for Medically Necessary treatment as an Outpatient at any registered Clinic or Hospital as a result of a covered bodily injury arising from an Accident, within 24 hours of such Accident and subject to the maximum amount and the limits stated in the Schedule of Benefits. **Follow up treatment by the same Doctor or same registered Clinic or Hospital for the same covered bodily injury shall be provided up to a maximum amount of thirty (30) days from date of Accident, subject to the maximum amount and the limits stated in the Schedule of Benefits.***

The assured contended that the delay was due to the unavailability of the Magnetic Resonance Imaging (MRI) machine at the hospital.

Investigation and Findings

Based on the attending doctor's clarification letter, the assured's MRI appointment was initially scheduled on 4/6/2013. However, the appointment was postponed to 12/6/2013 as the MRI schedule was full.

The Mediator was of the view that the assured should not be penalized as the delay in the follow up treatment arising from the availability of the MRI machine was not within his control.

The Mediator highlighted to the insurer the provision in the **BNM's Guideline on Claims Settlement Practices (Consolidated) BNM/RH/GL/003-9**, which states:

4.4.2 *Repudiation of Liability*

4.4.2.2 *An insurer should not repudiate a claim on the following grounds:*

- *Technical breaches of warranty or policy conditions which are not material or unconnected to the circumstances of the loss, unless it had prejudiced the interest of the insurer or has exceeded time bar as provided under the law;*

Settlement

The insurer concurred with the Mediator's observation and settled the claim with the assured.

Case A08 : Hospitalisation Claim – Partial Non-Disclosure

Background

The assured was admitted to a hospital for L5 nerve impingement and cervical spondylosis and upon discharge submitted a hospitalization claim.

The insurer declined the claim on the grounds of non-disclosure of material facts as the assured did not fully disclose his medical history of slip disk in the Proposal Form and the Backache Questionnaire Form.

Based on the assured's statement in the Proposal Form and the Backache Questionnaire Form, the insurer's medical examiner had concluded that the assured's low back pain symptoms were minimal with good range of movement and no neurological deficit and complication. Hence, the policy was approved. However, when the claim was filed, the insurer discovered that the injury to the spine was much more serious than previously declared.

The assured contended that he had informed his servicing agent of his medical history relating to his back problem from 2003 to 2011.

Investigation and Findings

The Mediator noted from the Backache Questionnaire Form that the assured had disclosed the name of the doctor and hospital where he sought treatment and the insurer could have obtained further information at the proposal stage. The Mediator highlighted to the insurer **Section 150(3) of the Insurance Act 1996**, which states:

Where a proposer fails to answer or gives an incomplete or irrelevant answer to a question contained in the proposal form or asked by the licensed insurer and the matter was not pursued further by the licensed insurer, compliance with the duty of disclosure in respect of the matter shall be deemed to have been waived by the licensed insurer.

The Mediator also observed that the servicing agent conceded that the assured had informed him of his medical condition.

The Mediator also highlighted that **S Santhana Dass in the 'Law of Life Insurance in Malaysia'** (page 102) had outlined the test for the waiver of the disclosure of a material fact as follows:

If the insurer receives information from the insured or their agent which, by its content or form should suggest a doubt to the mind of a reasonable prudent insurer and put them on inquiry, then if they omit to make any check or inquiry, assuming it can be made simply, they will be held to have waived disclosure of the material fact which that inquiry would necessarily have revealed."

"If a proposer submits a medical report on his condition together with the proposal form and the insurer does not bother to read it, they cannot later complain that there has been a non-disclosure of any information contained in the medical report.

The Mediator was of the view that it was the duty of the underwriter to evaluate the risk based on the assured's partial disclosure of the treatment received for his backache. However, the insurer did not inquire further by obtaining a medical report from the assured's doctor. As such, they are held to have waived the disclosure of material fact and estopped from rejecting the claim on the grounds of non-disclosure.

Settlement

In view of the above, the insurer revised their decision and settled the assured's claim.

Case A09: Permanent Disablement Claim: Non-disclosure

Background

The assured suffered from 'Acute Paralysis from Cervical Disc Prolapse' due to a fall on 17/3/2010. He filed a claim under the Total and Permanent Disability benefit.

The assured's claim was repudiated on the grounds of non-disclosure of the assured's medical condition, i.e. treatment for cervical spondylosis in 2006 and 2007, in his application for Life Insurance/ Proposal Form dated 27/12/2007.

Investigation & Findings

The Mediator observed that the assured had taken a comprehensive Life Insurance policy from the insurer in 2004. Subsequently in 2006, the assured had applied for a medical card and he had disclosed his medical condition of cervical spondylosis. The insurer had approved his application but excluded the illnesses relating to the neck, spine and limbs.

According to the assured, when he applied for a Life policy with Personal Accident (PA) rider on 27/12/2007, he was informed that his particulars will be filled in later by the insurer based on the records in their database.

The Mediator was of the view that the insurer had knowledge of the assured's treatment for cervical spondylosis from their records. The Mediator referred to **Section 150(2)(c) of the Insurance Act 1996**, which states:

The duty of disclosure does not require the disclosure of a matter that:

(c) The licensed insurer knows or in the ordinary course of his business ought to know.

Settlement

The insurer agreed with the observations of the Mediator and accordingly settled the claim with the assured.

Case A10 - Hospitalisation Benefit Claim – Childbirth

Background

The assured was hospitalised from 16/10/2013 to 20/10/2013. She filed a claim under the *'Hospitalisation Benefit for Childbirth Benefit' for the 5 days of confinement in the hospital*. The insurer approved her claim for 3 days of confinement at the rate of RM2,000.00 per day totalling RM6,000.00. However, the assured was dissatisfied with the insurer's decision and filed her dispute for the 5 days of confinement.

Investigation and Findings

The insurer's decision was based on the medical report from the assured's attending doctor which confirmed the following:-

- i. the assured did not suffer any medical complications after the delivery;
- ii. the assured had recovered well but experienced post-natal condition of breast engorgement on her fourth day of the confinement;
- iii. the post-natal care can be done at home; and
- iv. there were no medical complications after her delivery.

As such, the insurer was of the view it was not medically necessary for the assured to be confined to the hospital for 5 days.

Upon perusing the supporting documents submitted, the Mediator highlighted to the insurer that the provisions in the policy did not require the assured to show that her confinement period was medically necessary or was due to complications of childbirth. The policy terms merely stated that the daily hospitalisation benefit was subjected to a maximum of 5 days per delivery for a maximum of 3 deliveries.

Settlement

The insurer revised its decision and settled the assured's claim for 5 days of confinement.

Case A11 : Hospitalisation Benefit Claim – Non-disclosure

Background

The assured's hospitalisation claim in relation to his admission on 30/1/2014 and 27/3/2014 for 'Severe Coronary Artery Disease' was repudiated on the grounds of non-disclosure of his medical condition, that is, 'Hypertension' in the proposal form dated 21/3/2011.

Investigation and Findings

The insurer's decision was based on a medical report from the assured's attending doctor, which stated that:

- i. The assured first became his patient on 1/3/2013, when the assured experienced shortness of breath and was diagnosed with '*Coronary Artery Disease with Severe Mitral Regurgitation*';
- ii. He has never treated the assured for hypertension; and
- iii. The assured informed him that Dr. XYZ had treated him for hypertension in 2003.

There was no other medical report submitted by the insurer to confirm that the assured was diagnosed with hypertension and received treatment since 2003.

The Mediator opined that a decision to decline the claim on grounds of non-disclosure of a pre-existing condition must be based on proper medical records or documentary evidence of medical test or examination.

The Mediator highlighted to the insurer that there must be clear medical evidence that the insured was diagnosed with hypertension before completing the application/proposal form and the statement must be supported by factual evidence, in particular the date of diagnosis, the name of the doctor who made the diagnosis and the treatment/medication prescribed.

The insurer requested for further medical information, that is, the assured's pre-employment medical report. However, there was no documentary evidence of a diagnosis. Dr. XYZ had subsequently clarified that the assured had no history of hypertension.

Settlement

The insurer revised its decision and settled the assured's hospitalization claim.

General Insurance (Non-Motor)

Case A12 : Travel Insurance

Background

During the insured's return journey to Malaysia, one of his checked-in luggage went missing and he made a Property Irregularity Report with the airport authorities. The luggage was subsequently found and returned to the insured three days later. The insured filed a claim under the policy for luggage delay.

The insurer repudiated the claim on the basis that luggage delay on the return journey to home territory is excluded by the policy.

The insurer referred to Section 4 of the Policy – Luggage Delay which states as follows:

For each insured person we will pay:

RM200.00 for compensation if your accompanying checked-in luggage is delayed for six(6) consecutive hours from the time of arrival at the destination abroad, and followed by the sum of RM200.00 for the next six(6) consecutive hours of delay and so on up to RM800.00.

For each insured we will not pay if:

- 1. Claims not declared to authorized personnel of the carrier if your luggage is late or lost.*
- 2. Luggage delay when it occurs on the return journey to your home territory.*

However, the insured contended that the exclusion 4(2) was not stated in the policy document furnished to him by the agent at the time of purchase.

Investigation and Findings:

The Mediator observed that the agent who handled the sale neither furnished the policy jacket containing the detailed wordings of the terms and conditions at the time the insurance was purchased nor after the premium was settled. This had prejudiced the insured as he could not refer to the precise terms and conditions of the policy. It is important that a clear full printed copy of the policy terms and conditions should be made available to all customers whose premium payments have been received. The insured had relied on the travel brochure which was provided with the policy certificate. The Mediator also noted that the brochure given to the insured had stated the following under the heading of 'Important Notes':-

- *The descriptions of cover are a brief summary for quick and easy reference. The precise terms and conditions that apply are in the Policy Document.*
- *You can request to view the actual insurance policy before you sign up. Kindly contact XX Insurance's Customer Service staff for assistance.*

Settlement

The insurer agreed with the observations of the Mediator and accordingly revised their decision and made an offer without admission of liability and this was accepted by the insured.

Third Party Property Damage

Case A13: Method of Computing Compensation for Assessed Repair Time

Background

The claimant was dissatisfied with the amount offered for 'Compensation for Assessed Repair Time' (CART) by the insurer for the loss of use of his vehicle. The claimant's vehicle was in the workshop for 10 days but the insurer had offered compensation for 2 days only. The insurer subsequently revised their offer to 5 days. However, this was also rejected by the claimant.

Investigation & Findings

The insurer clarified that their initial offer of 2 days was based on the recommendation of the insurer's in-house adjuster who had recommended that 15.80 labour hours were required to repair the vehicle. The insurer then divided the labour hours by 8 hours per day to arrive at the 2 repair days. The claimant disagreed with the method employed in assessing the 2 repair days as it was not in accordance with **Persatuan Insurans Am Malaysia's Guideline**, which states:

Compensation for Assessed Repair Time (CART)

Please note that Assessed Repair Time means the number of days required for the repair of the damaged vehicle as assessed and recommended by the independent loss adjuster and shall exclude any delays, howsoever and/or by whomsoever caused, which may occur before and/or after the actual repair.

According to the claimant, the operative word in the Guideline is 'days' and therefore the method of dividing the total repair time by 8 hours per day to arrive at the repair days was not in accordance with the above-mentioned Guideline.

The Mediator observed that all the insurance and takaful providers apply the same method of calculation when computing the number of repair days, i.e. 8 working hours per day.

The Mediator further observed that the insurer had applied their discretion to add 3 more days for unforeseen delays which is in accordance with **Condition 3 of Appendix II, BNM's Guidelines On Claims Settlement Practices (Consolidated) BNM/RH/GL/003-09**, as quoted below:

3. *The number of days for computation of CART shall be based on the independent loss adjuster's recommendation on the number of days for repair of the damaged vehicle subject to the insurers' discretion to apply an additional seven working days grace period for unforeseen delays.*

Decision

The Mediator upheld the insurer's revised offer of 5 days.

Takaful

Case A14 : Takaful Family - Total and Permanent Disability Benefits

Background

The participant claimed that she was suffering from hearing loss due to 'recurrent left cholesteatoma' (ear disease) and therefore, she should be entitled to claim for Total and Permanent Disability (TPD) benefits under the Certificate.

Investigation and Findings

The participant's claim was repudiated on the ground that her condition does not fulfill the Certificate's definition of TPD which reads as follows:

Total and Permanent Disability (hereinafter referred to as 'TPD') shall mean disability caused by an accidental bodily injury, illness or disease which wholly prevents the participant from engaging in any work, business, occupation or profession for wages, compensation or profit, provided however, that such disability must last for a continuous period of not less than six (6) months in duration.....

The occurrence of any of the following shall also be defined as Total and Permanent Disability:

- a) *total and irrecoverable loss of sight of both eyes; or*
- b) *loss by severance of two limbs at above wrist or ankle; or*
- c) *total and irrecoverable loss of the sight of one eye and loss by severance of one limb at or above wrist or ankle.*

The takaful operator rejected the claim based on the medical report prepared by the attending physician which stated that the participant had 'cholesteatoma' but the disability did not prevent her from continuing her current occupation as a consultant.

The Mediator noted that although the participant had suffered 'recurrent left cholesteatoma', this situation did not prevent her from engaging in any work or occupation for wages or profit as stated in the medical report. The Mediator observed that although her illness had affected her hearing function but it did not render her incapacitated to the extent of preventing her from performing her daily routine and earning a living. As such, the participant did not suffer from TPD.

Decision

Based on the facts and circumstances of the case, as well as, the medical evidence provided by the attending physician, the Mediator upheld the decision issued by the takaful operator.

Case A15: Takaful General (Motor) – Own Damage Claim Repudiated Based on Exclusionary Clause

Background

The participant submitted an 'Own Damage' claim to the takaful operator for the cost of repair of the insured vehicle which was damaged by a fallen tree due to strong wind. The claim was repudiated under clause (5) of the Certificate which excluded liability due to or arising from '*...flood, typhoon, hurricane, stormor other convulsion of nature...*'.

Investigation and Findings

The Mediator noted that the takaful operator had repudiated the claim on the grounds that there was 'heavy rain' at the material time pursuant to clause (5) of the Certificate. The takaful operator based its decision solely on the police report lodged by the participant which stated that it was raining heavily at the material time.

The Mediator requested the takaful operator to furnish reports from the Meteorological Department to support their contention that the loss fell within the ambit of clause (5) of the Certificate which states as follows:

Clause (5):

General exception - These apply to entire Certificate.

We will not pay for any liability under the following circumstances:

- (5) If loss, damage or liability is directly or indirectly caused by or contributed to by or arising from flood, typhoon, hurricane, storm, tempest, volcanic eruption, earthquake, landslide, landslip, subsidence or sinking of the soil/earth or other convulsion of nature is involved.*

According to the Meteorological Department, a 'light breeze' is defined as wind speed between 0.8 and 1.9 meters per second and 'windstorm' exists when the wind speed is 24.5 meters per second. The Meteorological Department's report confirmed that the wind speed at the material time was 2.1 meters per second and a 'windstorm' did not occur. However, the takaful operator maintained their decision based on the police report.

The Mediator requested the takaful operator to re-consider its decision as 'heavy rain' was not one of the perils excluded under clause (5) of the Certificate. The takaful operator should have obtained the Meteorological Department's report to ascertain whether the claim fell within the exclusion of clause (5) of the Certificate before repudiating the claim.

Settlement

The takaful operator revised their decision and settled the claim.

Third Party Property Damage

Case A16: Liability of Third Party Insurer for the Cost of Tint Film Replacement

Background

The claimant had made an 'Own Damage Knock for Knock' claim from her own insurer. The insurer had paid for the cost of repair and windscreen replacement but not for the cost of the tint film replacement. The claimant then made a third party claim and the third party insurer agreed to compensate her for the loss of use of the vehicle only. Her claim for the cost of replacing the tint film was declined as it was an accessory item and was not payable under the 'Compensation for Assessed Repair Time' (CART) claim. The claimant contended that she was entitled to claim for the replacement cost of the tint film from the insurer.

Investigation & Findings

The Mediator requested for the third party insurer's confirmation on whether a claim for cost of replacing the 'tint' fell within the scope of 'accessories'. The insurer confirmed that the windscreen was insured but not the tinted film. As such, the claimant was unable to claim for the cost of replacing the tint film from her own insurer.

Settlement

At the Mediator's request, the third party insurer appointed a loss adjuster to inspect the repaired vehicle and agreed to compensate her for the cost of replacing the tint film. The claimant accepted the revised offer.

Case A17: Repudiation of a Third Party's Claim due to the Insured's Non Co-operation

Background

The insured claimed for the cost of repairs, adjuster's fee and loss of use of vehicle damaged in an accident. The third party insurer repudiated the claim on the grounds that 'their insured had failed to render full co-operation to our adjuster'.

Investigation & Findings

The insurer made their decision based on the following policy condition:

CONDITIONS – THESE APPLY TO THE WHOLE POLICY

2. ACCIDENTS AND CLAIMS PROCEDURES

- (d) *Every communication, writ, summons and/or process from other parties must be sent to Us immediately You must also tell Us if You know of any impending prosecution inquest or fatal inquiry without delay. In case of theft or other act which may give rise to a claim under this Policy, You must without undue delay make a report to the Police and co-operate with Us in securing the convictions of the offender.*

The Mediator highlighted to the insurer that the words 'co-operate with us' refers to 'securing the convictions of the offender' rather than a general condition. The Mediator requested the third party insurer to review the claim.

Settlement

The claim was reviewed by the third party insurer and it was amicably settled with the insured.

BANKING (including Islamic Banking)

Cash Deposit Machine (CDM)

Case B01: Cash Deposited at CDM not Credited into Account

Background

Mr GRU claimed that he had deposited RM500.00 into his current account via XT Bank's CDM on 3/2/2014 but the money was not credited into his account. On 15/6/2014, Mr GRU lodged a claim against XT Bank for the refund of RM500.00. He produced a transaction receipt purportedly as proof of the sum deposited at XT Bank at 10.00pm on 3/2/2014.

Investigation and findings

XT Bank's investigation revealed that there was no record of the deposit transaction for RM500.00 as claimed by Mr GRU. The bank had checked the CDM Electronic Journal for deposits recorded between 9.45pm and 10.20pm on 3/2/2014. The bank could not trace the RM500.00 claimed to be deposited by Mr GRU.

However, the bank's records showed that there was a cash deposit of RM500.00 in Mr GRU's current account at the same CDM at 10.00pm but this transaction was done on 3/5/2014 and not 3/2/2014 as claimed.

The Mediator noted that the time, the amount deposited and the location of the CDM for the deposit transaction performed on 3/5/2014 matched exactly with the time, amount and location of the CDM printed on the transaction receipt dated 3/2/2014 which was furnished by Mr GRU. However, Mr GRU was unable to produce the transaction receipt for the cash deposited on 3/5/2014 as proof that he had deposited another RM500.00 into his account on the said date.

The Mediator also noted that Mr GRU had lodged the dispute on the non-credit of RM500.00 on 3/2/2014, which was 4 months after the purported deposit transaction by which time the closed circuit television (CCTV) recording was no longer available.

Based on the bank's CDM Electronic Journal, the Mediator concluded that there was no record of the alleged deposit of RM500.00 into Mr GRU's account on 3/2/2014.

Decision

The Mediator upheld XT Bank's decision.

Case B02: Customer Left the Cash Recycling Machine (CRM) Without Completing the Deposit Transaction

Background

Mr X deposited RM3,000.00 into his daughter's savings account via TC Bank's CRM. The CRM allows cash deposited into the machine to be recycled and dispensed.

According to Mr X, the CRM had accepted the cash and the amount deposited was displayed on the screen. However, before he could confirm the transaction, the CRM went out of service. After waiting at the CRM for about 1 minute, Mr X approached the bank's Customer Service Officer for assistance. He later discovered that the sum of RM3,000.00 was not credited into his account.

Investigation and findings

TC Bank's CRM records revealed that the CRM was operating smoothly and there was no error or cash jam during and after Mr X's transaction. The CRM Electronic Journal record showed that the CRM had accepted 30 pieces of RM100.00 notes. Thereafter, the CRM requested for a confirmation of the deposited amount. However, Mr X failed to respond to the request within the designated time frame of 42 seconds and the transaction was automatically cancelled. The deposited cash was then returned by the machine. TC Bank confirmed there was no excess cash found at the CRM.

Upon examination of the documentary evidence adduced, the Mediator concluded that Mr X had failed to complete the deposit transaction by confirming the amount deposited resulting in the automatic cancellation of the deposit transaction. Thereafter, the cash was returned by the machine and the bank's record showed that the returned cash was subsequently taken.

Decision

The Mediator upheld TC Bank's decision.

Automated Teller Machine (ATM)

Case B03: Failure to Cancel Transaction

Background

Mr P, a customer of DD Bank, attempted to withdraw cash at ABC Bank's ATM. After Mr P had inserted the ATM card and entered the PIN, a message appeared on the ATM screen informing Mr P that a MEPS fee of RM4.00 would be charged for the transaction. According to Mr P, he cancelled the transaction, retrieved his card and left the ATM. The following day, Mr P discovered that RM3,000.00 had been deducted from his savings account.

Investigation and findings

ABC Bank's ATM records revealed that Mr P's withdrawal was successfully executed and the sum of RM3,000.00 was dispensed.

ABC Bank explained that according to the bank's withdrawal sequence, customers using the bank's ATM are required to insert the card into the ATM slot and remove it before proceeding to enter the PIN. ABC Bank stated that the MEPS charge of RM4.00 per transaction will only be displayed on the ATM screen when another bank's ATM card is used at ABC Bank's ATM. Customers are given a choice to either proceed or cancel the withdrawal transaction by selecting the options on the ATM screen.

The ATM record showed that the withdrawal transaction was not cancelled by Mr P. The closed circuit television (CCTV) recording revealed that Mr P had inserted the card and removed it from the ATM. He was seen pressing the keypad and he left the said ATM without realizing that the transaction process has not been terminated or cancelled. The CCTV further revealed that a subsequent customer who had approached the said ATM saw the incomplete transaction and continued to withdraw RM3,000.00 from Mr P's account. The bank is unable to trace the identity of the subsequent customer.

The Mediator noted from the CCTV recording and the ATM records that Mr P did not cancel the transaction by selecting the option to discontinue the withdrawal on the ATM touchscreen. It is highly probable that Mr P being unfamiliar with ABC Bank's withdrawal sequence had mistakenly assumed that the transaction was cancelled when he retrieved the card and left the ATM. The Mediator was of the view that Mr P had failed to ensure that the transaction was properly cancelled before he left the ATM and this had led to his loss of RM3,000.00.

Decision

The Mediator upheld ABC Bank's decision.

Case B04: Customer Left the ATM Without Waiting for Cash to be Dispensed

Background

Mr CX attempted to withdraw RM1,000.00 from YZ Bank's ATM. Mr CX's first withdrawal attempt was unsuccessful. When he made a second withdrawal attempt at the same ATM, he received a transaction slip which stated that the transaction was rejected. Mr CX then moved to another ATM to make a withdrawal and he discovered that RM1,000.00 had been deducted from his account.

Investigation and findings

The ATM records revealed that Mr CX's first withdrawal attempt was unsuccessful. However, the second withdrawal was successfully executed and 20 pieces of RM50.00 notes totalling RM1,000.00 were dispensed by the ATM. The cash was dispensed 5 seconds after the card was retrieved and it was taken 1 second later. There were no irregularities or excess cash found during the balancing period.

The Bank's closed circuit television (CCTV) recording revealed that Mr CX had retrieved a transaction slip after his first withdrawal attempt. Thereafter, he continued with the second withdrawal attempt. Mr CX retrieved his card and left the ATM immediately without waiting for the cash to be dispensed. The dispensed cash was then taken by a subsequent customer.

YZ Bank managed to trace the identity of the customer who had taken the cash based on the details of the card that was used at the ATM. The Bank contacted the customer who agreed to return the money.

Settlement

YZ Bank returned the sum of RM1,000.00 to Mr CX.

Case B05: Unauthorised Overseas ATM Withdrawal

Background

Ms ZT, an accountholder with ABS Bank was issued with a debit card. Ms ZT activated her debit card for use overseas prior to her visit to the United Kingdom (UK) from 9/4/2011 until 16/6/2011.

On 30/4/2011, Ms ZT used her debit card at an ATM in London to perform a balance inquiry and she noted that the balance in her savings account was GBP200.00. On 9/5/2011, Ms ZT attempted to withdraw cash at an ATM but the transaction was unsuccessful and the message displayed on the ATM screen stated that her card could not be used. Ms ZT then called ABS Bank to re-activate her card.

When Ms ZT checked her account balance, she discovered that the balance in her account was only GBP45.00. Ms ZT disputed that the following unauthorised withdrawals in the UK were performed without her knowledge and consent:

Date	Time	ATM Location	Amount Withdrawn equivalent to RM
4/5/2011	5:53:16pm	Camden Town	300.00
4/5/2011	5:54:09pm	Camden Town	150.00
5/5/2011	5:55:12pm	KentishTown	250.00

Ms ZT stated that her debit card was always in her possession and she has never allowed anyone else to use her card. Ms ZT revealed that the PIN is related to her date of birth.

ABS Bank's investigation revealed that Ms ZT's card was used at Kentish Town and Camden Town, United Kingdom on 4/5/2011 and 5/5/2011. ABS bank rejected the claim as the unauthorised withdrawals were successfully performed with the card and valid PIN which is known only to Ms ZT. Furthermore, by the time Ms ZT had contacted the bank, the money had been withdrawn from the account.

Investigation and Findings

The Mediator observed that the withdrawal transactions were approved via a valid PIN and the information stored in the magnetic stripe of the card. There was no lost card report lodged prior to the alleged unauthorised withdrawals, which indicated that the card and PIN were in Ms ZT's possession at the material time. The unauthorised transactions had occurred in the UK when Ms ZT was residing in the UK and the withdrawals were transacted at the ATMs which were within the vicinity of her residence.

ATM withdrawals can only be transacted via a genuine card and a valid PIN combination which is only known to the cardholder. The debit card issued to Ms ZT is a PMPC chip-based card with enhanced security features to prevent card cloning. The amounts withdrawn were relatively small even though there were funds in Ms ZT's account at the material time. This is not reflective of ATM withdrawals performed by a fraudster. Fraudsters usually perform numerous withdrawals up to the maximum daily limit to deplete the funds in the account within the shortest possible time frame.

The Mediator is of the view that Ms ZT is responsible as a cardholder to maintain and safeguard the custody and confidentiality of the card and the PIN at all times. In this regard, the PIN assigned was related to the first 6 digits of Ms ZT's identity card number which could be easily traced. The Mediator concluded on a balance of probabilities that the alleged unauthorised withdrawals were made by a third party who had access to Ms ZT's card and the PIN was compromised.

Decision

The Mediator upheld ABS Bank's decision.

Case B06 – Unauthorised Inter Bank Fund Transfer (IBFT) via ATM

Background:

Ms LK, an accountholder of MM Bank, was issued with an ATM card with a daily cash withdrawal limit of RM1,000.00 and an Inter-Bank Fund Transfer (IBFT) limit of RM1,000.00.

On 12/9/2013 at about 1.41pm, whilst Ms LK was driving to Perak, an officer purportedly from LL Bank contacted her and stated that her LL Bank credit card was used at a retail outlet and there was an outstanding amount owed to LL Bank. When Ms LK insisted that she did not own a LL Bank credit card, the caller said that her personal details have been leaked to a syndicate and advised her to lodge a report with Bank Negara Malaysia (BNM) immediately. The call was then purportedly connected to a 'BNM officer' and she was asked to reveal her account details. She was cautioned not to inform anyone including the banks that 'BNM' is recording her account details as it would affect 'BNM's' investigation. Ms LK was then instructed to go to the nearest MM Bank's Automated Teller Machine (ATM) where the 'BNM officer' would assist her to link up her accounts with the 'BNM secure account' via phone.

As the 'BNM officer' sounded knowledgeable and professional throughout the conversation, Ms LK was convinced that the details of her account had been leaked to a syndicate and she genuinely believed that the 'BNM officer' would assist her to secure her account. When Ms LK arrived at the nearest MM Bank's ATM, the 'BNM officer' asked her to focus on the keypad and to follow his instructions closely. Ms LK was told to ignore the messages that appeared on the ATM screen as it differed from the messages on his computer screen. As a result, Ms LK was unaware of the types of transaction she had performed at the ATM. Thereafter, Ms LK was instructed to withdraw RM5,000.00 and to deposit the money into an account through a cash deposit machine (CDM) of another bank, SM Bank. After Ms LK had deposited the cash, she realised that she was scammed and she reported the scam to MM Bank around 6.00pm.

Ms LK alleged that she had unknowingly performed an IBFT of RM4,999.52 at the ATM machine at 4.23pm and she only intended to link up her account with the 'BNM secure account'. Ms LK stated that she was anxious and engrossed with the caller's instructions and she did not notice the warnings placed by MM bank at the ATM to alert its customers on ATM scams. Ms LK disputed the IBFT of RM4,999.52 and she alleged that MM Bank had failed to block the said transaction after her report at 6.00pm.

MM Bank rejected the claim on the grounds that the IBFT was performed by Ms LK via her ATM card and PIN at 4.23pm. Ms LK had only reported the scam 2 hours after the fund transfer by which time the money had been withdrawn from the third party's account. MM Bank stated that all IBFTs performed via ATM are processed real time. There were warnings displayed on the ATM screen and the vestibule of the Self Service Terminal (SST) to warn customers of scams.

Investigation and Findings

The Mediator found that Ms LK had responded to a phone call scam and had unknowingly increased the IBFT limit from RM1,000.00 to RM5,000.00. Ms LK had subsequently performed an IBFT transfer of RM4,999.52 at 4.23pm and withdrew RM5,000.00 at 5.42pm. The cash was deposited into a third party account through a CDM of another bank at 5.58pm.

The IBFT allows funds to be transferred electronically to accounts at real time and the fund is immediately available in the account. It is noted that the cash was immediately withdrawn by the fraudster soon after the fund transfer. As Ms LK had reported the scam to MM Bank 2 hours after the fund transfer, the money had been withdrawn and any attempt to recover the money would be futile.

The Mediator opined that Ms LK should have verified with MM bank's staff regarding the 'linking of the account with BNM' before proceeding with the transactions at the ATM when she went to MM Bank at 4.00pm. The fund transfer was made on Ms LK's own volition and she was responsible for the loss.

Decision

The Mediator upheld MM Bank's decision.

Operational Issues

Case B07: Claim on a Fixed Deposit Pledged under Lien

Background

Mr L maintained a fixed deposit (FD) of RM10,000.00 at BH Bank since 20/2/1997 for 12 months. The said FD was pledged under lien to BH Bank as additional collateral for a housing loan granted to Mr L in 1997. The original FD certificate was held by BH Bank as security and the FD was automatically renewed annually until 20/12/2002.

Mr L produced a copy of the disputed FD certificate and BH Bank's confirmation that the FD was held under lien. Upon settlement of the loan in 2009, Mr L requested for the said FD to be uplifted.

BH Bank rejected Mr L's claim based on non-availability of records in the bank's system and on the assumption that the FD was most likely withdrawn prior to the full settlement of the loan. BH Bank was unable to produce the withdrawal vouchers as the transaction had exceeded the bank's record retention period.

Investigation and Findings

Subsequent to the mediation session held to hear the dispute, BH Bank managed to retrieve further evidence which revealed that there was a premature upliftment of the FD in 2000 and the net proceeds of RM9,500.00 was transferred into Mr L's corporate account on the same date.

Decision

The Mediator upheld BH Bank's decision.

Case B08: Losses in Investment

Background

Ms JY, a homemaker, maintained a fixed deposit (FD) account with KL Bank. In September 2007, the unit trust consultant of KL Bank approached Ms JY to invest in a Structured Fund ('the Fund') launched by the bank. The Fund was supposed to yield high returns a year after the 2008 Olympics in China and the consultant assured Ms JY that there was no risk involved in the investment. She was also promised high returns from the investment within a short period of time, compared to the lower interest derived from FD placements.

Ms JY was convinced with the statements made by the unit trust consultant and she withdrew RM50,000.00 from her FD and invested it in the Fund in September 2007. Ms JY was asked to pre-sign the fund redemption forms as she was residing overseas.

After the 2008 Olympics, Ms JY was shocked to find that the performance of the Fund had deteriorated and the value of her investment had declined to RM30,000.00.

Upon Ms JY's return to Malaysia in 2010, she discussed the loss suffered by her with the unit trust consultant and the bank manager. She was then persuaded to switch part of the investment to another Fund without incurring any switching fee.

In 2011, Ms JY approached the bank manager to enquire about the status of the investment. She was informed that the value of both the existing and new Funds had deteriorated.

Ms JY asserted that she has no investment knowledge and she had relied on the recommendations made by KL Bank. Ms JY alleged that the misrepresentations by KL Bank had led her to invest in the wrong unit trust and thereby suffered losses. Ms JY's preference was to place her money in fixed deposits.

KL Bank rejected the claim on the grounds that they had complied with the procedures and guidelines for investments. The bank's marketing materials and the Fund prospectus clearly stated that the product purchased was a unit trust and not a deposit. The unit trust consultant who dealt with Ms JY was a licensed unit trust consultant.

According to KL Bank, Ms JY is not a first time investor and she had previously invested in similar unit trust funds prior to this dispute. Therefore, she should be aware of the risks involved and would be able to differentiate a fixed deposit from a unit trust product. According to KL Bank, Ms JY's previous investments in the bank's unit trust funds had yielded positive returns on maturity. However, her investment in the existing funds had resulted in losses due to the global market downturn which was beyond the bank's control.

Investigation and Findings

During the mediation session, it came to light that Ms JY had previously invested in a unit trust. The Mediator opined that just because Ms JY had invested in previous funds, it cannot be assumed that she understands and/or appreciates the risk and returns of the new funds that were introduced or marketed by the bank. There are various types of funds in the market ranging from bonds to unit trusts, capital guaranteed funds and also funds packaged with insurance products which suits the needs and risk appetites of the potential investors. The unit trust consultant marketing these products should be fully equipped with such skills and knowledge. A potential investor should be furnished with a copy of the prospectus to read and understand before deciding to invest.

Ms JY's decision to invest in the fund was based on her trust in KL Bank as she had an ongoing

relationship with the bank for more than 50 years. Ms JY did not appreciate the inherent risk of investing in the capital growth investment product due to her educational background and lack of knowledge in investment products.

Although KL Bank claimed that the tool for risk profiling of potential investors was not available in 2007, the unit trust consultant should nevertheless be able to assess the risk appetite of the potential investor. Based on Ms JY's educational background and her risk appetite, the consultant ought to have introduced investments which were more conservative and short term.

Decision

The Mediator revised KL Bank's decision and held that the bank refund the principal investment amount of RM50,000.00 to Ms JY.

Case B09: Overseas Fund Transfer via Money Transfer Agency to Wrongful Beneficiary

Background

In May 2012, Mr HM applied for 2 remittances of GBP100 each through the money transfer service at YB Bank, an agent for a Money Transfer Bureau, in favour of Mr HM's father (the 'beneficiary'). The fund transfer was for a deposit in support of the beneficiary's application for a work permit visa and immigrant expatriate certificate from the United Kingdom (UK) Border Agency. The YB Bank's Money Transfer receipts of GBP100 each were couriered to the UK Border Agency together with the visa application.

The beneficiary's application for work permit visa was rejected and Mr HM approached YB Bank for a refund of the 2 remittances totalling GBP200. However, Mr HM received a refund for only one remittance of GBP100. Mr HM was informed that the second remittance of GBP100 was paid out by the Money Transfer Bureau to the beneficiary in the UK in May 2012.

Mr HM alleged that YB Bank and the Money Transfer Bureau had negligently paid out the money to an unknown third party without proper verification and identification of the recipient in the UK. The beneficiary produced his original passport and a letter from the Immigration Department to verify that he did not go to the UK in May 2012.

YB Bank rejected the claim on the grounds that the Money Transfer Bureau had paid the intended beneficiary in the UK in May 2012.

Investigation and Findings

The Mediator observed that the beneficiary had sent the original copies of the fund transfer receipts which carried the reference numbers together with the visa application documents to the UK Border Agency in May 2012 in accordance with the Agency's requirement.

The Money Transfer Bureau's application form carried a fraud warning citing examples of possible scenarios where applicants may fall victim to scams. However, neither Mr HM nor the beneficiary were advised that the fund transfer receipt reference numbers should be held in strict confidence and

should not be disclosed to any party other than the beneficiary. There was also nothing printed on the receipt to warn customers against sending the payment details (including the reference number) to third parties. On this note, the Mediator opined that YB Bank and the Money Transfer Bureau should have drawn Mr HM's attention to the relevant fraud warnings.

The beneficiary's passport verified that he was not in the UK in May 2012. The Money Transfer Bureau claimed that the pay-out was made upon verification of the identification papers of the beneficiary such as the original passport. However, the Money Transfer Bureau refused to reveal documentary evidence as to the identity of the receiver of the fund. In the absence of such evidence, the benefit of the doubt was given to Mr HM and the beneficiary.

Decision

The Mediator revised YB Bank's decision.

Case B10: Missing Money in Savings Account after Bank Merger

Background

Ms Z maintained a savings account with B Bank since 1998. In 2008, B Bank merged with A Bank to form BA Bank.

In 2014, Ms Z produced her passbook bearing number 78116 issued by B Bank to withdraw money from her savings account at BA Bank. However, BA Bank informed Ms Z that the money had been withdrawn from her account. Ms Z maintained that she did not withdraw the money from her savings account. Moreover, there was no evidence to show when and who had made the withdrawal.

BA Bank was unable to locate Ms Z's account number as the records had exceeded the bank's record retention period. However, BA Bank was of the view that the account could have been closed prior to the merger in 2008. Furthermore, Ms Z had only raised the dispute 14 years after the date of the last transaction printed on the passbook. BA Bank was also unable to confirm whether any ATM card had been issued by the merged bank and there was no record of the money being transferred to the **Registrar of Unclaimed Monies**. There was also no record of the passbook being reported lost or stolen.

Investigation and Findings

The Mediator observed that the disputed passbook bearing number 78116 held in Ms Z's possession was issued on 17/8/1998. The passbook was last updated on 1/10/1999 following a cash withdrawal of RM2,000.00 and leaving a balance of RM15,000.00 in the account. The final update was done on the last available space in the last page of the passbook. Based on the transaction records printed in the passbook, the savings account had been active with deposits and withdrawal transactions recorded every month from August 1998 until 1/10/1999.

The bank managed to retrieve an audit trail which revealed that a new passbook bearing number 99815 was issued under the same account number on 5/10/1999. The Mediator concluded that the new passbook bearing number 99815 issued on 5/10/1999 had replaced the old passbook bearing

number 78116 which was held by Ms Z. As such, the passbook bearing number 78116 was no longer valid in view of the issuance of the subsequent passbook bearing number 99815 issued on 5/10/1999.

Decision

The Mediator upheld BA Bank's decision.

Case B11: Payment Made on a Post-Dated Cheque

Background

On 12/10/2012, Mr LC, customer of JJ Bank, had issued a post-dated (16/11/2012) cheque for RM12,000.00 in favour of a property agent for payment of commission for a real estate deal.

On 18/10/2012, Mr LC received a call from JJ Bank to seek confirmation whether he had issued the cheque for RM12,000.00 dated 06/10/2012. Mr LC instructed the bank to stop payment of the cheque as the cheque was post-dated 16/11/2012 and not 06/10/2012. Mr LC furnished the cheque counterfoil as evidence that the cheque was post-dated 16/11/2012.

Mr LC later discovered that JJ Bank had honored the cheque despite his instruction to the bank to 'stop payment' on the cheque. Mr LC averred that he did not receive any voice message on his hand phone requesting him to contact JJ Bank before the cheque was cleared. He contended that the bank should have returned the cheque if they were unable to contact him as the cheque was tagged for apparent alteration by the collecting bank. JJ Bank refunded a portion of the cheque amount but Mr LC rejected the bank's settlement offer.

JJ Bank rejected Mr LC's claim for a full refund on the grounds that there was no apparent alteration on the cheque even though the cheque was tagged by the collecting bank. According to JJ Bank, there was no reason to return the disputed cheque and the bank did not want to wrongfully return the cheque.

Nevertheless, JJ Bank had attempted to contact Mr LC to verify and confirm the issuance of the said cheque before honoring it. Unfortunately, Mr LC could not be reached and a voice-mail message was left on Mr LC's hand phone. JJ Bank had furnished the telephone bill as proof of the calls made to Mr LC. JJ Bank was of the view that it had taken all reasonable steps to contact Mr LC to confirm the disputed cheque prior to honouring the cheque. Nonetheless, JJ Bank refunded part of the disputed amount into Mr LC's account towards settlement of the dispute.

Investigation and Findings

The Mediator noted from a cursory examination of the physical cheque furnished by JJ Bank that the alleged alteration to the date of the cheque from '16/11/2012' to '06/10/2012' was apparent. The cheque was also tagged for apparent alteration by the collecting bank and returned to JJ Bank as required under the eSpick Guidelines. When a cheque is tagged with a flag value seven (7), it is a requirement under the eSpick Guidelines that the paying bank should contact its customer for confirmation of the cheque to ensure that the cheque is paid in accordance with the customer's mandate.

The Mediator was of the view that JJ Bank should have returned the cheque when it could not confirm the cheque with the drawer of the cheque as the cheque was tagged with a flag value seven (7) by the collecting bank. In this instance, JJ Bank had made the payment on the cheque despite the cheque being tagged for 'apparent alteration' by the collecting bank without obtaining confirmation from Mr LC.

On this note, the Mediator brought JJ Bank's attention, to **Clause 16.4.2 of the eSPICK Guideline** which states:

16.4.2. Apparent alteration(s) shall be tagged with Flag value seven (7). Paying banks receiving such cheques shall treat the tags as notification only and not construed them as instruction to return the cheques unless it is confirmed that the reason provided is manipulation, suspected items or forgery. The Paying bank has to call the customers for confirmation.

The Mediator also referred to **Rule 1.2 of the Guideline issued by the Association of Banks in Malaysia on 'Cheque Truncation and Conversion System'** as follows:

Rule 1.2: In amplification of the foregoing, tagging cheques with 'Tag Value 7' shall not in any way be construed as an outright return of the cheques on the part of the Collecting Banks. Paying Banks are alerted to handle the cheques so tagged appropriately in accordance with their relevant internal control measures Representations to customers leading to connotations that it is the Collecting Banks which decide whether or not to 'return' the cheques and to tag the same with 'Tag Value 7' are to be avoided.

- (4) The Collecting Bank shall tag all non-conforming cheques with the applicable non-conforming flags. The Paying Bank shall be 100% liable for payment on non-conforming cheques, which have been tagged.*
- (5) The Collecting Bank shall be 100% liable for payment on non-conforming cheques, which have not been tagged with the applicable non-conforming flags.*
- (6) In the event the Paying Bank decides to pay such a cheque, the Paying Bank shall be 100% liable.*

It is trite law that any fraudulent alteration on a cheque is construed as material alteration. Section 64 of the Bills of Exchange Act 1949 provides that where a bill or an acceptance is materially altered without the assent of all parties liable on the bill, the bill is made void except when used against a party who has himself made, authorized or assented to the alteration, and subsequent endorsers.

Based on the findings, the Mediator concluded that JJ Bank had erred in making payment on an altered cheque which was tagged for apparent alteration without obtaining prior confirmation from the drawer and it did so at its own risk.

Decision

The Mediator revised JJ Bank's decision and allowed the claim in full.

Internet Banking

Case B12: Phishing Scam

Background

Mr A, user of XXX Bank's internet banking (IB) services, received an e-mail on 10/7/2013 purportedly from XXX Bank. Mr A was required to confirm and verify his account information by clicking on a hyperlink provided in the e-mail for profile validation, as part of the bank's ongoing effort to protect its customers' account and prevent fraudulent activities.

Upon reading the e-mail, Mr A clicked onto the hyperlink provided in the e-mail and proceeded to login by entering his username and password.

Mr A then requested for the transaction authorisation code (TAC) to be sent via sms to his hand phone registered with XXX Bank. Upon receipt of the TAC, Mr A entered the TAC to complete the identification process.

Mr A then realised that he was scammed and he contacted XXX Bank at 9.38am on the same day. Mr A was informed that a transaction for METT transfer services amounting to RM5,241.14, including charges, was performed at 9.22am. Mr A was advised to lodge a police report and file an official complaint with the bank for investigation.

Mr A disputed the METT money transfer transaction and contended that he only does fund transfers via internet banking. Mr A asserted that XXX Bank ought to obtain his confirmation before executing the transaction as part of its due diligence process since the transaction differed from his normal on-line activity pattern.

Mr A alleged that XXX Bank had transferred the money without his consent and that he was not alerted by the bank before or after the said transaction.

XXX Bank rejected Mr A's claim on the grounds that the disputed transaction was successfully executed with Mr A's valid username and password. The bank did not send the e-mail requiring Mr A to verify his account information.

Investigation and Findings

Upon receiving Mr A's complaint, XXX Bank cancelled his internet banking facility immediately and tried to recover the money from the METT transfer services. However, the money could not be recovered as it was withdrawn by the time Mr A alerted XXX Bank.

This is a case of 'phishing' *modus operandi* whereby Mr A was deceived by the fraudster via a fake website which looked identical to the XXX Bank's website. The fraudster randomly sends e-mails to lure victims to update their internet banking credentials via a hyperlink in the e-mail which is redirected to a fake website. When a victim logs into the fake website, the essential credentials such as his username and password would be retrieved by the fraudster. The victim is then directed to request for the TAC and then to enter the TAC into the fake website to complete the process. The fraudster who has the essential credentials and the TAC will then perform the online transactions without the victim's knowledge.

XXX Bank contended that security alerts are placed on its official website, internet banking page, self-service terminal area, and also aired on radio to warn customers of such scams. Customers are constantly reminded not to click on any URL or link received via e-mail purportedly sent by XXX Bank as the bank does not send e-mails requiring customers to update their account information.

XXX Bank stated that Mr A should have been alerted upon receiving the TAC which was sent to his mobile phone as the content in the sms indicated that the purpose of the TAC was for 'METT'.

According to XXX Bank, there was no system failure or breach of security during the aforesaid transaction and a valid internet banking username and password which is known only to Mr A was used to execute the transaction.

Settlement

The Mediator noted that Mr A's three essential personal credentials, that is: his username, password and TAC were compromised when Mr A responded to the phishing e-mail. It is Mr A's duty to ensure and observe all security measures prescribed by XXX Bank to safeguard his credentials. The Mediator referred to **Bank Negara Malaysia's Guideline on Consumer Protection on Electronic Fund Transfer [BNM/GP11] dated 10 December 1998**. Clause 15(1) of the guideline which states:

15 (1) *A customer shall not –*

(A) *directly or indirectly disclose to any person the access code of his card or any electronic device used to effect an electronic fund transfer ; or*

(B) *fail to take reasonable care to keep the access code secret.*

Mr A was reminded to be alert and to ensure that he always checked XXX Bank's URL on the browser together with other security alerts (https, lock icon, secure word etc.) prior to entering his username and password.

On the other hand, the Mediator noted that XXX Bank's alert system was not triggered despite the unusual transaction pattern. The Mediator highlighted to XXX Bank that it ought to have an alert mechanism for activation of METT transfer services. The Mediator observed that XXX Bank had allowed the same TAC to be used for activation of METT transfer services and also transfer of money. The Mediator opined that there should be different TAC assigned for different transaction and the TAC content should always be clear, precise and easily understood. Furthermore, there was no post alert notification from XXX Bank to inform Mr A of the successful transaction.

Both parties acknowledged observations made by the Mediator and the dispute was amicably resolved.

Credit/Debit Card

Case B13 : Compromised Credit Card

Background

When Madam E received her credit card statement, she noticed two unauthorized transactions totalling RM500.00 performed on 19/12/2013 at a snooker centre in Cheras, Kuala Lumpur. Madam E disputed the transactions on the grounds that her credit card was in her possession and she normally uses the card for retail transactions such as purchase of groceries and petrol. She contended that the signature on the sales draft differed from her signature.

Investigation and Findings

XZ Bank's investigation revealed that the disputed transactions were performed at a Snooker Centre close to Madam E's residence in Cheras, Kuala Lumpur on 19/12/2013.

XZ Bank stated that Madam E's EMV credit card was presented at the merchant to rent pool tables. Madam E did not dispute a subsequent retail transaction which was performed at a petrol station on the same day. The bank further stated there was no lost card report by Madam E prior to the two disputed transactions.

XZ Bank emphasized that all cardholders must exercise due care in the usage and safekeeping of their credit cards at all times.

Decision

The Mediator upheld XZ Bank's decision. However, as a token of goodwill, XZ Bank agreed to waive the finance and late payment charges incurred on the disputed amounts.

Case B14 – Chargeback

Background

Mr Y, a stamp collector, bought a stamp through e-bay website for RM4,000.00 via his credit card on 11/3/2013.

Upon receiving the merchandise on 27/3/2013, Mr Y found that the item was not genuine and he immediately instructed the bank to cancel the payment. Mr Y submitted his dispute form to the bank on 28/3/2013. However, when Mr Y received his June 2013 statement, he noted that the disputed amount was still charged to his account.

The bank had performed a chargeback after they received Mr Y's dispute on 28/3/2013 and the disputed amount was refunded to Mr Y's account. However, the bank had re-debited the disputed amount from Mr Y's account after they received Mr Y's confirmation dated 14/5/2013 that he had authorized the transaction.

Mr Y claimed that he had misunderstood the word 're-debit' stated in the bank's letter dated 2/5/2013. Mr Y had mistakenly assumed that the word 're-debit' meant 'to refund' the disputed sum into his account. Mr Y lodged a second dispute with the bank on 20/6/2013.

Investigation and Findings

Mr Y had voluntarily performed the transaction and had confirmed the following to the bank on 14/5/2013.

"I confirmed the transaction(s) is/are effected by me and I authorize you to re-debit my account".

When Mr Y realised his mistake, he re-submitted a second dispute form and the bank performed a second chargeback with the merchant. However, the chargeback was unsuccessful as it was outside the time frame stipulated by Mastercard and Visa International.

Decision

The Mediator upheld the bank's decision. Mr Y was advised to liaise directly with the merchant for a refund as the credit card was only a mode of payment to facilitate the online purchase transaction between Mr Y and the merchant.

Case B15 – Debit Card

Background

Mr X holds a credit card and an ATM/debit card issued by ABC Bank. On 28/6/2014, Mr X received two sms alerts to inform him that two transactions totalling RM1,800.00 were charged to his debit card. Mr X disputed the transactions and lodged a police report.

Mr X was unaware that his debit card could be used for retail purchases and he thought that the unauthorised transactions were performed using his credit card. However, he noticed that the last 4 digits of his credit card number did not tally with the numbers appearing in the sms alerts. When Mr X called ABC Bank, he was advised to ignore the two sms alerts as the 4 digit numbers stated in the sms alerts did not tally with the last 4 digit of his credit card number. When Mr X updated his savings account on 1/7/2014, he discovered that his savings had been depleted. Mr X then realised that the unauthorised transactions were performed using his lost debit card. Mr X contended that the bank had failed to advise him on the dual function of his debit card and he was unaware that his debit card could be used to perform retail transactions. Mr X asserted that he had requested for an ATM card and not a debit card. Mr X further contended that the bank ought to have separate application forms for ATM cards and debit cards instead of a combined application form, which is confusing. Mr X denied performing the disputed transactions.

Investigation and Findings

The application form signed by Mr X clearly showed that the card issued was a debit card with a retail purchase limit of RM2,000.00. Mr X had signed the application form on 24/10/2012 and acknowledged that he understood the terms and conditions stipulated in the agreement. The bank

confirmed that the terms were clearly explained to Mr X during the application process. Sms alerts were sent to Mr X's mobile number on 28/6/2014 to notify him of the two transactions performed at 2.19 pm and 2.29 pm respectively. The bank blocked his debit card at 5.38 pm upon receiving his lost card report.

ABC Bank contended that the disputed transactions were successfully performed prior to the lost card report made by Mr X. The respective merchants were able to produce the sales slips as proof of sale. ABC Bank agreed, on goodwill basis, to waive 35% of the disputed amount but the bank's offer was rejected by Mr X.

The application form signed by Mr X was for a debit card. The application form clearly indicated the credit limit for retail transactions and also the ATM withdrawal limit. Mr X is bound by the terms and conditions of the debit card agreement upon signing the application form. ABC Bank had explained to Mr X that the dual function of the debit card allows the card to be used both for ATM as well as retail transactions. The Mediator noted that Mr X, a lecturer ought to have read and understood the terms and condition of the debit card agreement before signing the application form. On the other hand, the Mediator noted that when Mr X had contacted ABC Bank on the 2 sms alerts, the bank had advised him to ignore the sms alerts as the 4 digit numbers shown in the sms alerts did not tally with the last 4 digits of his credit card number. Had ABC Bank checked Mr X's profile, it would have discovered that the disputed transactions were performed using Mr X's debit card and notified him accordingly.

Decision

The Mediator apportioned the claim equally between the parties. ABC Bank agreed to waive all related finance charges.



FMB

Financial | Biro
Mediation | Pengantaraan
Bureau | Kewangan

Consumer Awareness

Staff Activities

Appendices

CONSUMER AWARENESS

As in the past years, FMB has continued to work in partnership with the governmental and also non-governmental agencies to educate and increase consumer awareness on FMB's role, functions and jurisdiction as an alternative dispute resolution channel. We believe that a continuous nurturing of the public will further enhance the level of awareness among consumers, as well as, position FMB as the point of reference in resolving financial disputes between the financial service providers (FSPs) and their customers.

In 2014, FMB participated in 24 seminars and briefings organised by the Perbadanan Insurans Deposit Malaysia (PIDM), Persatuan Keselamatan Pengguna Kuala Lumpur (PKP) and Bank Negara Malaysia (BNM) throughout the country to educate consumers and the FSPs' employees and agents on FMB's role as an alternative channel for settling financial disputes.

Participants of the awareness programmes include:

- FSPs' employees and agents
- Employees of Government departments
- College and university students
- Small Medium Enterprises (SMEs)
- Non-Governmental Organisations (NGOs)
- General Public

Seminars & Events:

No	Event	2014
1	Persatuan Keselamatan Pengguna Kuala Lumpur (PKP), Ritz Garden Hotel, Ipoh, Perak	19 February
2	Persatuan Keselamatan Pengguna Kuala Lumpur (PKP), Seasons View Hotel, Kuantan, Pahang	19 March
3	11th Malaysia International Halal Showcase 2014 (MIHAS 2014), KL Convention Centre, Kuala Lumpur	9 – 12 April
4	Persatuan Keselamatan Pengguna Kuala Lumpur (PKP), Hotel Midah, Kuala Lumpur	15 April
5	Persatuan Keselamatan Pengguna Kuala Lumpur (PKP), Mayangsari Resort, Port Dickson, Negeri Sembilan	23 April
6	PIDM, Ramada Plaza, Melaka	8 May
7	PIDM, SSM, KL Sentral	15 May
8	PIDM, Impiana Hotel, Ipoh, Perak	20 May
9	PIDM, Grand Margherita, Kuching, Sarawak	18 June

10	2014 Annual Consumer Complainfest, Cititel, Midvalley Megamall, Kuala Lumpur	24 June
11	PIDM Annual Outreach Programme, Kuala Terengganu, Terengganu	17 July
12	PIDM, Holiday Villa, Alor Setar, Kedah	6 August
13	PIDM, The Zenith Hotel, Kuantan, Pahang	14 August
14	Halal Fiesta 2014 (Halfest 2014), Mines Exhibition Centre, Sri Kembangan, Selangor	3 – 7 September
15	PIDM, Hyatt Regency Hotel, Kota Kinabalu, Sabah	10 September
16	Sabah International Exposition 2014 (SIE 2014), Sutera Harbour Resort, Kota Kinabalu, Sabah	18 – 21 September
17	Persatuan Keselamatan Pengguna Kuala Lumpur (PKP), Batu Buruk Beach Resort, Kuala Terengganu, Terengganu	23 September
18	Persatuan Keselamatan Pengguna Kuala Lumpur (PKP), Amansari Hotel City Centre, Johor Bahru, Johor	1 October
19	PIDM, SSM Building, KL Sentral	2 October
20	PIDM, Sunway Hotel, Penang	14 October
21	Persatuan Keselamatan Pengguna Kuala Lumpur (PKP), Pejabat Perhutanan Air Terjun Sekayu, Kuala Berang, Terengganu	15 October
22	PIDM, Puteri Pacific, Johor Bahru, Johor	5 November
23	Persatuan Keselamatan Pengguna Kuala Lumpur (PKP), Kota Bharu, Kelantan	26 November
24	Satu Daerah Satu Industri 2014, MITC, Ayer Keroh, Melaka	4 – 7 December

During these seminars, there was active involvement by the participants who acknowledged the valuable information they received from FMB's speakers. Many questions were raised on insurance and banking disputes handled by FMB.





Some of the issues raised are:

General

- Does FMB charge a fee to register a complaint?
- How does FMB process a complaint?
- How many decisions were made in favour of complainants or in favour of FSPs?

Banking Matters

- Will an ATM or credit cardholder be compensated by the bank for unauthorised withdrawals made via a cloned credit or ATM card?
- Will an ATM cardholder be compensated by the bank if he negligently leaves the ATM machine without waiting for the cash to be dispensed after performing a withdrawal at the ATM?
- Does FMB handle disputes related to phishing, short message service (sms) and phone call scams?

Insurance Matters

- Does FMB handle claims rejected by the insurer on the grounds of non-disclosure of material facts?
- Is the policyholder under an obligation to disclose all existing illness?
- Are bodily injury claims within FMB's jurisdiction?

STAFF ACTIVITIES

The FMB Recreational Club (formerly called i-Care) had organized several fun-filled activities for the staff during the year to strike a good work life balance and reinforce staff bonding. Among the various exciting activities held by the Club were the quarterly staff birthday celebrations, indoor games, bowling competition and karaoke session. The Club also organized an in-house 'Movie Night' in our library which was magically transformed into a mini theatre fully equipped with good sound system. Free flow of soft drinks, popcorn and other snacks were served during show time.



The highlight of the year was the FMB Family Day and Annual Dinner held on the 1/11/2014 and 2/11/2014 at the Nilai Springs Resort, Bandar Baru Nilai where the staff and their families came together for a fun-filled and eventful weekend. The aim of the two day event was to foster the spirit of teamwork collaboration, bonding and also to cultivate family togetherness. The event was graced by our Chairman, Tan Sri Dato' Seri Siti Norma binti Yaakob and her family members as well as other distinguished members of the Board.

Everyone enjoyed the telematch organised during the day and in the evening, everyone was treated to a gala and fabulous dinner with Karaoke Competition, table games and lucky draws filling up the night. Attractive prizes such as Mini iPads, television, Samsung Galaxy phones and Canon cameras were given away to the winners. Everyone was dressed in their best in line with the theme of the evening 'Retro Night' and there was non-stop music selection from the evergreens of the 60s, 70s and 80s to entertain the guests. The evening was also spiced up with a 'flash mob' dance performance by the committee members on a 'twist' number which drew spontaneous participation from the floor, the distinguished guests included. It was indeed a fantastic and unforgettable night.



The good turnout and staff participation in all the activities organised in 2014 is indeed very encouraging and goes to show the Club's success in achieving its objective to create a positive and productive work environment and to ensure that the staff stay energized and enthusiastic throughout the year.



APPENDIX I

MEMBERS (as at December 2014)**COMMERCIAL BANKS (24)**

1. Affin Bank Berhad
2. Alliance Bank Malaysia Berhad
3. AmBank (M) Berhad
4. Bangkok Bank Berhad
5. Bank of America Malaysia Berhad
6. Bank of China (Malaysia) Berhad
7. Bank of Tokyo-Mitsubishi UFJ (Malaysia) Berhad
8. BNP Paribas Malaysia Berhad
9. CIMB Bank Berhad
10. Citibank Berhad
11. Deutsche Bank (Malaysia) Berhad
12. Hong Leong Bank Berhad
13. HSBC Bank Malaysia Berhad
14. Industrial and Commercial Bank of China (Malaysia) Berhad
15. J. P. Morgan Chase Bank Berhad
16. Malayan Banking Berhad
17. OCBC Bank (Malaysia) Berhad
18. Public Bank Berhad
19. RHB Bank Berhad
20. Standard Chartered Bank Malaysia Berhad
21. Sumitomo Mitsui Banking Corporation Malaysia Berhad
22. The Bank of Nova Scotia Berhad
23. The Royal Bank of Scotland Berhad
24. United Overseas Bank (Malaysia) Berhad

ISLAMIC BANKS (16)

25. Affin Islamic Bank Berhad
26. Al Rajhi Banking & Investment Corporation (Malaysia) Berhad
27. Alliance Islamic Bank Berhad
28. Amlslamic Bank Berhad

29. Asian Finance Bank Berhad
30. Bank Islam Malaysia Berhad
31. Bank Muamalat Malaysia Berhad
32. CIMB Islamic Bank Berhad
33. Hong Leong Islamic Bank Berhad
34. HSBC Amanah Malaysia Berhad
35. Kuwait Finance House (Malaysia) Berhad
36. Maybank Islamic Berhad
37. OCBC Al-Amin Bank Berhad
38. Public Islamic Bank Berhad
39. RHB Islamic Bank Berhad
40. Standard Chartered Saadiq Berhad

INVESTMENT BANKS (10)

41. Affin Hwang Investment Bank Berhad
42. Alliance Investment Bank Berhad
43. AmInvestment Bank Berhad
44. CIMB Investment Bank Berhad
45. KAF Investment Bank Berhad
46. Kenanga Investment Bank Berhad
47. Maybank Investment Bank Berhad
48. MIDF Amanah Investment Bank Berhad
49. Public Investment Bank Berhad
50. RHB Investment Bank Berhad

DEVELOPMENT FINANCIAL INSTITUTIONS (6)

51. Bank Pembangunan Malaysia Berhad
52. Bank Pertanian Malaysia Berhad (Agrobank)
53. Bank Rakyat
54. Bank Simpanan Nasional
55. Export-Import Bank of Malaysia Berhad
56. Small Medium Enterprise Development Bank Malaysia Berhad (SME Bank)

PAYMENT SYSTEM OPERATORS AND PAYMENT INSTRUMENT ISSUERS (2)

57. AEON Credit Service (M) Berhad
58. Diners Club (Malaysia) Sdn Bhd

LIFE INSURANCE COMPANIES (9)

59. Allianz Life Insurance Malaysia Berhad
60. AmMetLife Insurance Berhad
61. AXA Affin Life Insurance Berhad
62. Gibraltar BSN Life Berhad
63. Great Eastern Life Assurance (Malaysia) Berhad
64. Hong Leong Assurance Berhad
65. Manulife Insurance Berhad
66. Sun Life Malaysia Assurance Berhad
67. Tokio Marine Life Insurance Malaysia Berhad

GENERAL INSURANCE COMPANIES (18)

68. ACE Jerneh Insurance Berhad
69. AIG Malaysia Insurance Berhad
70. Allianz General Insurance Company (Malaysia) Berhad
71. AmGeneral Insurance Berhad
72. AXA Affin General Insurance Berhad
73. Berjaya Sampo Insurance Berhad
74. Lonpac Insurance Berhad
75. MSIG Insurance (Malaysia) Berhad
76. Multi - Purpose Insurans Berhad
77. Overseas Assurance Corporation (Malaysia) Berhad
78. Pacific & Orient Insurance Co. Berhad
79. Progressive Insurance Berhad
80. QBE Insurance (Malaysia) Berhad
81. RHB Insurance Berhad
82. The Pacific Insurance Berhad
83. Tokio Marine Insurans (Malaysia) Berhad
84. Tune Insurance Malaysia Berhad
85. Uni.Asia General Insurance Berhad

COMPOSITE INSURANCE COMPANIES (5)

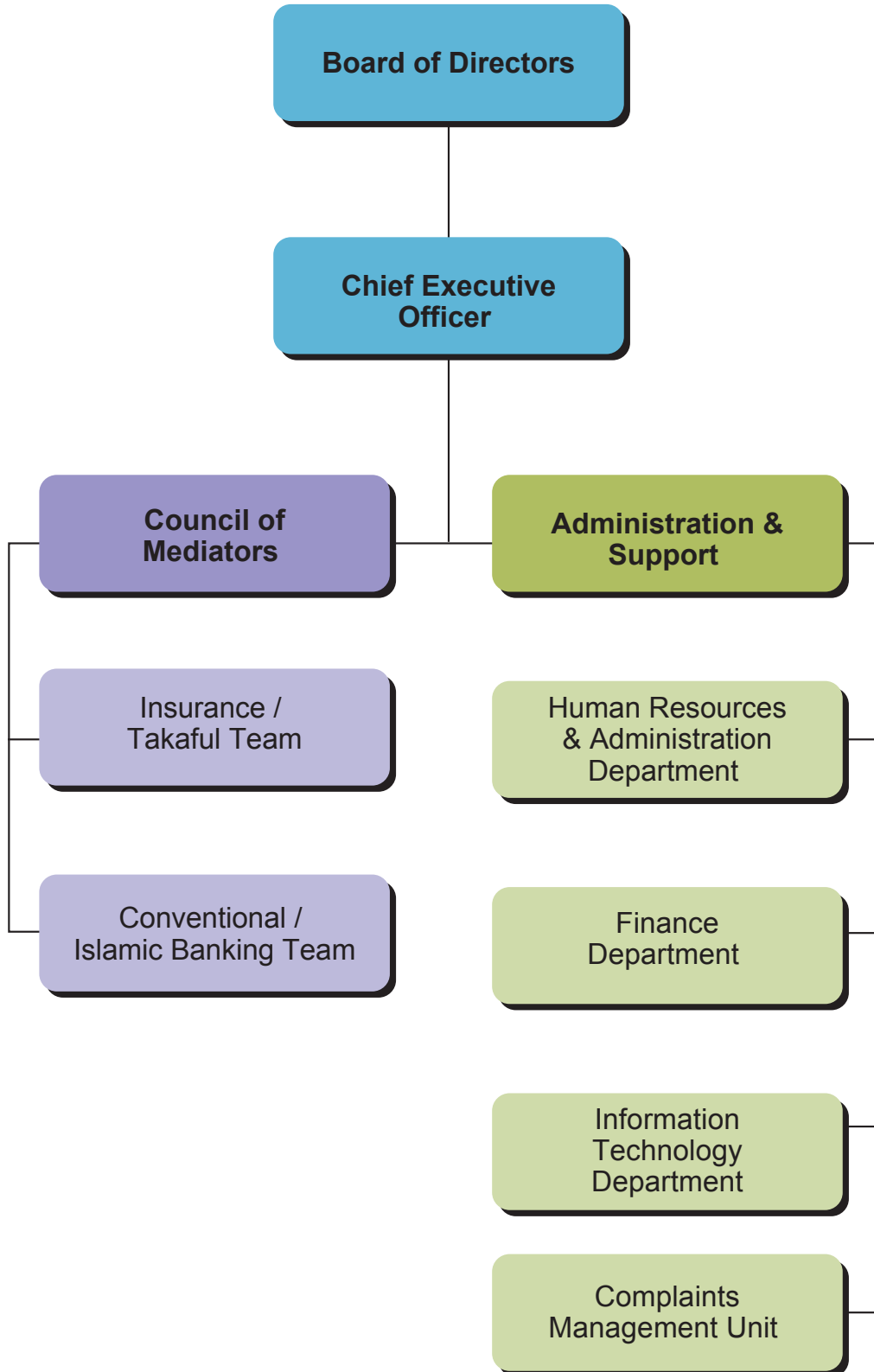
86. AIA Berhad
87. Etiqa Insurance Berhad
88. MCIS Insurance Berhad
89. Prudential Assurance Malaysia Berhad
90. Zurich Insurance Malaysia Berhad

TAKAFUL OPERATORS (10)

91. AIA PUBLIC Takaful Berhad
92. Etiqa Takaful Berhad
93. Great Eastern Takaful Berhad
94. Hong Leong MSIG Takaful Berhad
95. HSBC Amanah Takaful (Malaysia) Berhad
96. MAA Takaful Berhad
97. Prudential BSN Takaful Berhad
98. Sun Life Malaysia Takaful Berhad
99. Syarikat Takaful Malaysia Berhad
100. Takaful Ikhlas Berhad

APPENDIX II

ORGANISATION STRUCTURE





**FINANCIAL MEDIATION BUREAU
TERMS OF REFERENCE OF THE MEDIATOR**

A. JURISDICTION

Disputes on financial matters include:

- (a) Insurance/Takaful claims; and
- (b) Conventional banking/Islamic banking transactions including credit/debit/charge card claims.

The Mediator has jurisdiction:

To consider any complaint (including a dispute or claim) referred to him in connection with or arising out of a policy (or proposed policy) of insurance or takaful certificate and/or the transaction/facility of a conventional banking, Islamic banking, credit/debit/charge card with a Member of the Bureau and governed by the law of Malaysia but subject to these conditions:

- (i) The policy/certificate on insurance and takaful must be taken out by or on behalf of or for an individual or body corporate and underwritten within Malaysia.
- (ii) The facility on conventional banking, Islamic banking and credit/debit/charge card must be taken or utilised by an individual or body corporate.
- (iii) The complaint must:
 - (a) concern a claim under the policy/certificate or the marketing or administration, but not the underwriting of the policy/certificate; and
 - (b) have been considered by the senior management of the Member and his offer or observations (which contain the mediation clause for insurance and takaful claims) not accepted by the complainant; and
 - (c) be referred by the original policyholder/participant (or a successor in title otherwise than for value) in insurance and takaful claims, the person(s) involved with the conventional banking facility, Islamic banking facility; credit/debit/charge card holder (or a successor in title) who must be ordinarily resident in Malaysia or have been when the policy/certificate was effected and/or conventional banking facility, Islamic banking facility, credit/debit/charge card was taken and utilised by the complainant; and
 - (d) be referred to the Mediator within six months after such offer or observations (or later if the Member agrees); and
 - (e) not concern fraud cases involving insurance policies or takaful certificates or third party claim for personal injury; and
 - (f) not concern fraud cases other than fraud cases involving payment instruments, credit charge cards, Automated Teller Machine (ATM) cards and cheques of value RM25,000.00 and below; and

- (g) not concern complaints against staff of the Members; and
 - (h) not concern complaints by the staff of a Member against his employer or by insurance agents or takaful agents against their principals; and
 - (i) not be brought after the expiration of six (6) years from the date on which the cause of action accrued; and
 - (j) not concern the actuarial standards, tables and principles which the Member applies to its long term insurance business (including the method of calculation of surrender values and paid up policy values and the bonus system and bonus rate applicable to the policy/certificate in question) for insurance and takaful claims; and
 - (k) not concern general pricing, product policies, services of Members, credit decisions (approval, rejection and rescheduling of loans) for conventional banking, Islamic banking and credit/debit/charge cards matters; and
 - (l) not be the subject of proceedings in or decision of any court of law (or arbitration); and
 - (m) not have been previously referred to the Mediator unless new evidence is available.
- (iv) A complaint may also be made by a third party provided:-
- (a) the insured party has notified in writing to his insurer/takaful operator with full details as soon as possible after an event which may become the subject of the claim;
 - (b) the claim does not exceed RM5,000.00; and
 - (c) the claim is for damage or loss to property arising from motor insurance policy or takaful certificate issued by a Member.
- (v) The Mediator may investigate any complaint to see whether it is within his jurisdiction.

B. DUTIES

The Mediator's duties are:

- (i) To have regard to and act in conformity with
 - (a) the terms of any contract
 - (b) any applicable rule of law, judicial authority or statutory provision; and
 - (c) the general principles of good insurance, investment or marketing practice, the Bank Negara Malaysia's Guideline on Claims Settlement Practices for insurance/takaful matters; but with (c) prevailing over (b) in favour of the complainant.
 - (d) the general accepted principles of good banking practice for conventional banking and Islamic banking matters including credit/debit/charge cards.
- (ii) To have regard to (without being bound by) any previous decision of any Mediator.
- (iii) In the light of (i) and (ii) to assess what solution would be fair and reasonable in all the circumstances.
- (iv) To attend as required any meeting (or part) of Board to provide reports, information and assistance.
- (v) To provide each Board Member a copy of his report for the period co-extensive with the accounting financial year of the Bureau and for the Members.
- (vi) In the event that any question concerning a Syariah matter arises in the mediation process, to refer such question to the Syariah Advisory Council established under subsection 51(1) of the Central Bank of Malaysia Act 2009.
- (vii) Not to disclose any confidential information (except to persons properly entitled to such disclosure).

C. FUNCTIONS

The Mediator's functions are:

- (i) To act as a counsellor or conciliator in order to facilitate the satisfaction, settlement or withdrawal of the complaint.
- (ii) To act as an investigator and adjudicator in order to determine the complaint by upholding or rejecting it wholly or in part.
- (iii) Where the complaint is upheld, wholly or partially, to make a monetary award against the Member binding up to a maximum of RM200,000.00 in relation to motor and fire insurance policies and takaful certificates, RM100,000.00 in relation to other types of insurance policies or takaful certificates, and RM5,000.00 in relation to third party claims.
- (iv) Where the complaint is upheld, wholly or partially, to make a monetary award against the Member binding up to a maximum of RM100,000.00 (except for fraud cases involving payment instruments, credit/debit/charge cards, ATM cards and cheques for which the limit is not more than RM25,000.00) in relation to conventional banking and Islamic banking matters including credit/debit/charge cards.

D. POWERS

The Mediator's powers are:

- (i) On giving reasonable notice to attend any meeting (or part) of Board to address Board on any matter specified in the notice.
- (ii) Subject to the approval of the Board:
 - (a) to determine the methods and procedures to be adopted as expedient for considering and determining complaints impartially and fairly.
 - (b) to appoint (on such terms as to remuneration or otherwise as he shall think fit) any person who seems to him to be suitably qualified (whether as a professional adviser or as an expert) to act in conjunction with him; and
 - (c) to delegate such of his functions, duties and powers to an Assistant or such other staff of the Bureau as he shall think appropriate.
- (iii) To encourage research in and to carry out or commission such investigation or research as may seem necessary in connection with any of the objects of the Bureau.
- (iv) To decline to entertain or proceed with any complaint which he considers frivolous or vexatious or more appropriately dealt with by a court of law, by arbitration or by another independent complaints procedure.
- (v) To require the complainant or the Member concerned (and request any other person) to provide any information relevant to a complaint within such time as he considers reasonable.
- (vi) To consult within the insurance/takaful/conventional & Islamic banking industry and with other experts where he considers it appropriate about current insurance/takaful/conventional & Islamic banking matters, investment or marketing practice or about any other matter relevant to any complaint.

Approved by the Board of Directors on 29 April 2005

Operating Hours

Monday - Thursday

8.30am - 1.00pm

2.00pm - 5.30pm

Friday

8.30am - 12.15pm

2.30pm - 5.30pm

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